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Human Dignity and Diapraxis in 'Little Mogadishu'

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Human Dignity and Diapraxis in ‘Little Mogadishu’

Human Rights Culture in
the Interreligious Context of Kenya

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Cover photograph: Poster in a tea room on Sixth Street, Eastleigh, Nairobi (Kenya).
Invitation to an open-air preaching event (mihadhara). Theme: *Is the Bible God's Word?*
The Great Interfaith Dialogue, Uhuru Park Nairobi, 10-11 December 2011.

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HUMAN DIGNITY AND DIAPRAXIS IN ‘LITTLE MOGADISHU’

Human Rights Culture
in the Interreligious Context of Kenya

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List of Abbreviations

(I)NGO	(International) Non-Governmental Organisation
CBAR	Community-based Action Research
CBO	Community-Based Organisation
CCMRE	Centre for Christian–Muslim Relations in Eastleigh
CEDAW	Committee on the Elimination of Discrimination against Women
CJC	Community Justice Centre
CJPC	Catholic Justice and Peace Committee
CMR	Christian–Muslim Relations
DRA	Department of Refugee Agency
DRC	Danish Refugee Committee
EFC	Eastleigh Fellowship Centre
EMM	Eastern Mennonite Mission
FBO	Faith-Based Organisation
FGC	Female Genital Cutting
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit (German Society for International Cooperation)
GOK	Government of Kenya
HIAS	Hebrew Immigrant Aid Society
HRTK	Hebrew Refugee Trust of Kenya
HRW	Human Rights Watch
IBEAC	Imperial British East Africa Company
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights

ICMR	Islam and Christian–Muslim Relations
IDP	Internally Displaced Person
IRC	International Rescue Committee
ISMA	Islamia School and Mosque Association
JRS	Jesuit Refugee Services
KCBONET	Kamakunji Community-Based Network
KMC	Kenya Mennonite Church
KTI	Kenyan Transition Initiative
MCC	Mennonite Central Committee
MFGCH	Mama Fatuma Goodwill Children's Home
MFL	Muslim Family Law
MSF	Médecins Sans Frontières (French). Doctors Without Borders
NURRIA	Nairobi Urban Refugee Rights Integration Activities
PAR	Participatory Action Research
PBUH	Peace Be Upon Him. Expression after pronouncement of the name or title of Muhammad or reference to the Prophet.
PROCMURA	Programme of Christian Muslim Relations in Africa
RCK	Refugee Consortium Kenya
SGBV	Sexual Gender-Based Violation
SUPKEM	Supreme Council of Kenyan Muslims
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCRC	United Nations Convention of the Rights of the Child
UNDP	United Nation Development Programme
UNESCO	United Nations Economic Social and Cultural Organisation
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
URIP	Urban Refugee Intervention Programme
URPN	Urban Refugee Protection Network

USAID	United States Agency for International Development
WRR	Wetenschappelijke Raad voor Regeringsbeleid

Glossary

<i>‘id al-adhā</i>	Or <i>‘id al-kabīr</i> , the big feast (Arabic), commemoration of immolation or Ibrahīm’s submission to sacrifice his son
<i>ahmadiyyah</i>	Movement founded by Mirza Ghulam Ahmad in India
<i>al-shabāb</i>	The youth (Arabic), name of Muslim extremist organisation in Somalia, full name: <i>harakat al-shabāb al-mujahidīn</i> , ‘Movement of the Striving Youth’
<i>Ayah</i>	Verse, miracle (Arabic)
<i>barazā</i>	Veranda, council house (Ki-Swahili), referring to a public meeting at village level
<i>basmalah</i>	The prominent Islamic phrase ‘In the name of Allah, the most benevolent, most merciful’, (Arabic) which is used as an invocation, or short prayer expressing praise to God, or asking God to bless an important person with his peace
<i>Buuḥis</i>	Longing or obsession to escape (Somali)
<i>da’wah</i>	Call, invitation (Arabic), often referred to as ‘mission’
<i>Dhaqan celin</i>	Cultural and religious rehabilitation (Somali)
<i>dhikr</i>	Literally ‘remembrance’ (Arabic), can also refer to the practice in Sufism of pronouncing repetitively the name of God or special ritual phrase
<i>Fitra</i>	Natural moral capacity (Arabic)
<i>Hawala</i>	Trust-based money remittance (Arabic)
<i>hijrah</i>	Migration (Arabic), referring to the First Migration to Abyssinia (615 CE), and the Second Migration from Mecca to Medina (622 CE), the start of the Islamic Lunar Calendar (0 <i>Annum Hijrah</i> , A.H.)

<i>Ibadāt</i>	Islamic devotional practices (Arabic)
<i>intifādab</i>	Shaking of the dust (Arabic), name of Palestinian uprisings in late 1980s
<i>jua kali</i>	Fierce Sun (Ki-Swahili), referring to small-scale trading-business in the open-air market place
<i>Khalīfa</i>	Representative, vicegerent, steward (Arabic)
<i>Khat</i>	Stimulant drug leaves, also known as miraa (Arabic)
<i>khawārij</i>	Literally ‘those who go out’, ‘secede’ (Arabic), referring to a puritan group in early Islamic history
<i>Landbies</i>	Barracks-like residential area, in Kenya used in connection to the railway residential houses
<i>Linda Nchi</i>	Defend the Nation (Ki-Swahili), name of incursion of Kenyan Defence Force in Somalia (October 2011)
<i>Madrasah</i>	School (Arabic)
<i>Maslahah</i>	Public general benefit (Arabic)
<i>Matatu</i>	Mini-bus (Ki-Swahili)
<i>Mihadhara</i>	Lecture (Ki-Swahili), open-air preaching
<i>Mzungu</i>	Literally ‘a person who wanders’ (Ki-Swahili), referring to a white person or foreigner
<i>Nask</i>	Abrogation (Arabic)
<i>qādi</i>	Judge (Arabic), Khadi (Ki-Swahili), <i>Khadi</i> -courts, dealing with Muslim Family Law
<i>salāfi</i>	Movement of the old (Arabic), Islamic puritan movement
<i>sharī’ah</i>	Pathway (to a watering hole) (Arabic), Islamic Law
<i>tasbīh</i>	Prayer beads (Arabic), comparable to the Christian rosary
<i>Waqf</i>	Religious endowment (Arabic)
<i>Wilāya</i>	Guardianship, solidarity, collaboration (Arabic)



Acknowledgements

On Friday 23 August 2013, our colleague Christopher Peter passed away in M.P. Chah Hospital, Nairobi. With his untimely death, St Paul's University, and the academic world as a whole, have lost a true icon. A few months before he died, 'CB' guided us as an expert as we 'mapped' Eastleigh's Christian-Muslim relations. The book on this mapping project that he helped us publish in May 2013 – the first publication of our Centre for Christian-Muslim Relations in Eastleigh (CCMRE) – was his last. Many questions remain on which we wish he could have shed his light, always brilliantly and with his Indian sense of humour.

Sheikh Abdulaziz Merabaqsh Bunni was also an important influence for this present work. I first met him during a Train the Trainers course conducted by 'the Imam (Ashafa) and the Pastor (James)' from Nigeria in Ufungamano House, Nairobi, in November 2012. Since then I have met Bunni on a weekly basis, and we worked together in our joint endeavour to enhance Muslim-Christian relations in Eastleigh. Bunni's wholehearted dedication to this effort was a joy and a source of inspiration for me under sometimes unusual circumstances. I will always cherish the text messages he sent me to check whether I had got home safely after yet another Eastleigh trip. Proud of his Punjabi Muslim pioneers' heritage in Eastleigh, he was a great companion in interreligious encounters on the ground, both as a 'gatekeeper' in academic work and as a friend indeed.

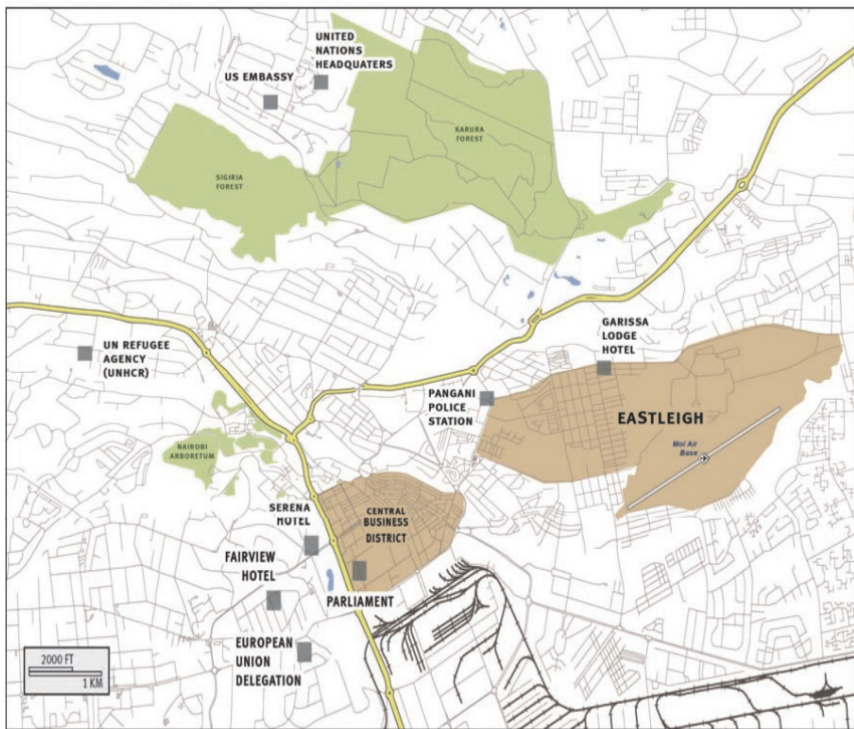
I thank both Professor Gerrie ter Haar and Professor Marcel Poorthuis for supervising this project. I admire Gerrie ter Haar for her patience and pedagogical skills. She encouraged me to look closely at my use of the English language, and above all she prevented me from 'preaching' in my academic writing. I thank Marcel Poorthuis for his flexibility in joining this project at a later stage. He made me aware of my Protestant way of perceiving religious phenomena by confronting my

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Map

Central Nairobi and the suburb of Eastleigh



This map shows the location of the Eastleigh Estate in the City Centre of Nairobi, beside the Central Business District (CBD), and near organisations such as the UN Headquarters, the UN Refugee Agency (UNHCR), the Parliament Building of Kenya, the European Union Delegation, the US Embassy, and luxury hotels. (HRW, May 2013)



Summary

In the Foreword of the *UN 70th Anniversary Commemorative Edition: Universal Declaration of Human Rights* (see Appendix), former UN Secretary-General Ban Ki-moon writes: ‘The Universal Declaration of Human Rights remains as relevant today as it was on the day it was adopted. I hope you will make it a part of your life’. There is something deeply attractive about the idea underlying universal rights, that any person anywhere has an inherent dignity irrespective of citizenship, gender, religion, etcetera. This idea was, indeed, as relevant in 1948 as it is in 2018.

The *Vienna Declaration and Programme of Action: Adopted by the World Conference on Human Rights in Vienna on 25 June 1993* stated that ‘All human rights are universal, indivisible and interdependent and interrelated’. And yet, ‘the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind’ (note: see page 66). In some public discourses this statement is construed as making the Universal Declaration of Human Rights represent an abstract Western secular, individualistic, primarily legal document that is less relevant for the non-Western world, where religion matters in most people’s daily lives. However, this study shows that at a local inter-religious African level, human rights and religion are not always necessarily strange bedfellows.

In Eastleigh, an estate of Nairobi, Kenya, we mapped community and faith-based human rights organisations in almost every street. Eastleigh is known as ‘Little Mogadishu’ on account of the high percentage of residents of Somali Muslim descent. Wealthy business people and refugees from Somalia live there within a wider Christian majority context. The United Nations High Commissioner for Refugees (UNHCR) sends a number of refugees and un-accompanied minors to Eastleigh, from Somalia and other neighbouring countries. In Eastleigh’s Second Street, for instance, Christian and Muslim minors live side by side in the UNHCR-

selected orphanage *Mama Fatuma Goodwill Children's Home*. The home, which operates under a joint Muslim–Christian management, shelters children irrespective of their nationality, gender or religious background. It works in the spirit of the United Nations Convention of the Rights of the Child. In this former *madrasah*, you can find stickers on the children's wardrobes with texts such as 'Children's Rights are Human Rights'.

The research question of this study is: 'In what ways can human rights be a relevant third party to further Christian–Muslim relations in an African local context?' In order to answer this question, I propose a paradigm shift in the understanding of the concepts human rights and inter-religious dialogue. Human rights I define in terms of 'the culture of the human rights contained in declarations of human rights, hence the totality of beliefs, principles and values underlying these, and respect for that culture' (Van der Ven et al.). In this study, I propose an alternative for discursive interreligious dialogue in terms of *diap Praxis*. As defined by Lissi Rasmussen, *diap Praxis* is the 'cooperation between people of different faiths. After working together in relation to common challenges, discursive dialogue may follow as a reflection on common practice'.

Amartya Sen's social choice theory, with its focus on human rights as social ethics, provides the theoretical framework for the present research. In the conclusion of this study, Sen's theory is complemented by Jürgen Habermas's discourse theory on human dignity. According to Habermas, the 'untapped moral institution' within religion has something to offer to the intercultural dialogue on human dignity and rights at a local level. In the context of interreligious interaction, concepts such as *wilāyah* (collaboration) and *imago Dei* can be effectively matched with, respectively, 'liberative praxis' (Farid Essack) and 'correlative justice' (Van der Ven) regarding the dignity of the less fortunate in Eastleigh.

Three years before 9/11, Kenya was struck by religious extremism. After a wave of violent incidents, interreligious dialogues were held at luxurious locations which, according to a number of scholars, failed to solve the real issues on the ground. One of these scholars speaks of 'dialogue fatigue' (Anne Kubai). In Eastleigh, the open-air debates, *mihadhara*, organised by Muslim preachers in reaction to Christian so-called 'crusades', do not live up to the ideal of interreligious harmony. As the violation of human rights is a challenge that both Muslims and Christians face, Eastleigh's Muslims and Christians may make the 'social choice'

(Sen), for instance during the *mihadhara*, to discuss interreligious cooperation or *diapraxis* regarding their common challenge to uphold the human rights dignity of their co-citizens.

In this way, Muslim and Christian paralegals and members of Faith-based Organisations (FBOs) bear witness to their respective religions by counterbalancing frequent violations of human dignity on the ground. Human rights have thus become an extra religious criterion or third party for interreligious *diapraxis*. In my analysis, human rights culture allows for moral, constructive, mobilising, religious, dialogical and practical aspects and features of human rights. The moral-spiritual, 'localised' human rights culture 'from below' can be a relevant third party for the *diapraxis* of Christian–Muslim relations in Eastleigh. In the African interreligious context of 'Little Mogadishu', human dignity-based human rights culture matters, therefore, *diapractically*.



Foreword

Why this book?

In terms of global human rights violations, religion is often perceived as part of the problem rather than the solution. Religions can frequently seem unwilling to become involved in the quest for universal human rights. But in this book I wonder whether this is necessarily always the case. Especially after the events of 9/11, there is no doubt that religion will continue to be an important identity marker for the majority of the world's population. In Africa and Asia in particular, to deny religion as a possible player in the public discourse on what human dignity and rights entail, would be most impractical. In this study I will ask whether interreligious dialogue can play a modest but constructive role in public discourse on the idea of human rights.

Intercultural encounters and interreligious dialogue have always fascinated me. Just before I started studying theology and specialising in comparative religious studies in the 1980s, the Melkite priest and human rights activist Elias Chakour from Ibillin near Nazareth in Galilee, Israel, opened my eyes to the Christian-Palestinian perspective on the recent history of the Middle East. He enlightened me on what roles Jews, Christians, and Muslims and religion in general can play in times of conflict and reconciliation (Chakour & Hazard 1987, Chakour & Jensen 1990). His criterion for judging sound interreligious relations has always been that of human dignity.

Moving in very different contexts of the Middle East, the Netherlands, Pakistan, and recently Kenya, I continued to wonder what contribution people inspired by religion could make to social justice and human rights. As a student of Islam, after the 1987 *intifādah*, I saw how Jews, Christians, and Muslims encountered each other and discussed issues of human rights and social justice in a highly temperate manner in

the East-Jerusalem office of the Jewish human rights' organisation *Shalom Akhshav*, while almost always agreeing to disagree.

I wrote my Masters thesis while studying and living in Cairo, Egypt, in 1991-92. I studied the relationship between Islam and human rights by focusing on the reform methodology of the scholar and human rights activist Abdulahi Ahmad An-Na'im, who is originally from Sudan. An-Na'im was inspired by Mahmud Mohammed Taha, the founder of the *ikhwān jumburīyūn* (Republican Brothers), who was hanged on 25 January 1985 on charges of apostasy and blasphemy. This day, commemorating Taha's life and work, is now known as Arab Human Rights Day, although it is not yet widely recognised as such. I met An-Na'im a number of times both in Egypt and the Netherlands. In Cairo, I asked several Egyptian scholars for their views on the validity of his reform methodology of Islamic Law in relation to international human rights standards. Although the tenability of An-Na'im's reform methodology has been questioned, he is regarded as one of the leading experts on the relationship between religion and human rights.

In 1998 my *sharieke e-zindiqie* (life partner) and I were working for the Christian Study Centre in Rawalpindi, Pakistan. On the day of our arrival, the Catholic bishop and human rights activist John Joseph committed suicide, apparently on account of the blasphemy laws that threatened the basic human rights standards of Ahmadiyyahs, Shi'a Muslims, and Christians. And I vividly remember how we, as members of the Christian and Muslim faith-inspired civil society organisations reacted instantly to the news of Pakistan's first atomic bomb test by gathering in protest in front of the Parliament in Islamabad. Although I did not know any of the protesters personally, let alone everyone's individual motives, I sensed the urgency of the event and observed how common indignation about this event transcended religious and cultural boundaries.

In the Netherlands, the accepted model for encounters between Muslims and Christians has been the method of discursive interreligious dialogue. Over the years, I started to analyse the method of discursive dialogue, its outcomes, and societal impact. The dialogue usually begins with exchanging information about Islamic and Christian theological tenets followed by attempts to compare them, but the development of the discursive dialogue paradigm in my experience then reaches a stalemate. How can interreligious dialogue be made more relevant to society? How can interreligious dialogue shake off its image of involving 'drink-

ing Turkish tea in mosques and taking coffee and cake in churches while engaging in warm interreligious mutual understanding?¹

In 2008, I was one of the initiators of a project called *Faith in Human Rights*, developed to mark the sixtieth anniversary of the Universal Declaration of Human Rights (UDHR). Various religious and secular organisations worked together to enhance public discourse on the role religion could play in relation to international human rights standards. But when we visited the Dutch Ministry of the Interior to discuss the programme and the related budget, we learned that the Ministry's civil servants did not appreciate a critical approach to the UDHR from a religious perspective. They insisted that dialogue among the religions should uphold the unquestioned, presupposed universality of the UDHR. We even risked having our grant application refused if we failed to do so. I gradually started to wonder whether secular approaches to human rights should not welcome religious voices on a more equal footing in public discourse on human rights.

I lived and worked in Kenya from 2009 till 2014, a truly eventful period in that East African country's history. Kenya has a multi-ethnic, multi-cultural, and multi-lingual population. In this context, democracy and human rights can be understood as tools to manage diversity, especially with regard to minority rights. In 2010, a Bill of Rights was made the basis of the drafting of the new constitution, giving human rights a renewed relevance for the country.² Together with the influential role of religion³ that continues to permeate Kenyan society, the complex relationship between human rights and religion appears as topics of importance. Muslims in Kenya constitute a significant minority of approximately 10-20 percent of a predominantly Christian population. The new 2010 constitution, enshrined within the framework of a Bill of Rights, marked the beginning of a new era in Kenya. The constitution states that international law, including the Statute of Rome, is an integral part Kenya's national legal system, despite recent political efforts to withdraw from the International Criminal Court (ICC) in The Hague. In view of this the new constitution, adopted by referendum on 4 August 2010, I decided to investigate the relation between human rights culture and the role that religion can play in enhancing such a culture. I have focused my research on a particular area in Kenya's capital city Nairobi, Eastleigh.

In 2010, a referendum inaugurated Kenya's 'Second Republic', and its new human rights-based constitution was endorsed in August. The secu-

rity issue⁴ has continued to be a factor in Eastleigh. In October 2011, for the first time since independence in 1963, Kenya intervened in a neighbouring country, launching an attack on the *al-qa'ida*-linked *al-shabāb* movement in Somalia. This intervention under the name *Linda Nchi* ('Defend the Nation' in Ki-Swahili) would have huge repercussions for Kenyan-Somali citizens and urban Somali refugees in Nairobi and beyond. According to the media, Eastleigh in particular had become a battleground for *al-shabāb*.⁵ On 18 November 2012, students of St Paul's University heard an explosion a few hundred metres from St Teresa's Catholic Church. Wounded people gathered in the church compound as they fled the site of the blast. I learned from the students that a device had been detonated in a *matatu* bus, the only local means of transport, allegedly by *al-shabāb*.⁶ This was yet another act of terror in a context of international and national political tensions.

The neighbourhood has faced several critical stages in its history. After the attack by *al-shabāb* at the Westgate shopping mall,⁷ in September 2013, the Somali community in Eastleigh was collectively punished for adhering to a religion from which they derive dignity in difficult times. After a major operation by the Kenyan authorities called *Usalama Watch* ('Restore Peace' in Ki-Swahili), which started in April 2014, the estate has come under heavy surveillance in the context of 'Kenya's war on terror'. As a consequence, the inhabitants of Eastleigh, primarily its most vulnerable refugee population, are paying a high price in terms of infringements of their human dignity for atrocities committed by terrorists. The operation has left thousands of Eastleigh's residents with their basic human dignity compromised. Kenyans still have much to win by good practices of joint Muslim-Christian human rights action that celebrates human dignity.

Despite the constant threat and the security alerts, Eastleigh is truly a fascinating place because of the plurality of the inhabitants' backgrounds, both in terms of religion and culture. A whole plethora of religious and secular civil society organisations are addressing human rights issues in the estate. As a place of refuge after the 1991 Somali war, Eastleigh offered to many Somalis a relatively safe haven. As a community of business people and refugees, however, they are facing a range of issues that challenge their rights, from socioeconomic, political, and labour rights, to the basic right to live a life in dignity. Community-based organisations (CBOs) and NGOs, working alongside faith-based organisations (FBOs)

throughout the estate, are attempting to acknowledge the plight of its residents in relation to human dignity and rights. Eastleigh thus provides an intriguing context for my case study of human rights as a third party in an interreligious local praxis.

NOTES

¹ This was how right-wing politician Michael Smit addressed my approach of networking for purposes of intercultural relationships during one heated debate about multiculturalism in The Hague in 2000. Smit is currently a member of Parliament for the Party for Freedom (PVV). In November 2014, he proposed that all mosques in The Netherlands should be closed.

² 'Constitutionalism and the civic state are the institutional *sine qua non* of effective human rights protection in multi-ethnic states' (Ignatieff 2001: 32; cf. Baderin 2003: 21). According to Baderin, the acceptance of the human rights idea is based on international treaties such as the African Charter on Human and Peoples' Rights (1981) and the Arab Charters on Human Rights (1990 and 1993).

³ John Mbithi, an expert on religion in Africa, is often quoted as saying that Africans are 'notoriously religious'. This has recently been questioned, for instance in the Kenyan quality newspaper *Daily Nation*. In the cover story headed *Are the Gods of Africa Asleep?* Beatrice Kangai wrote 'The (African) continent is regarded as one of the most religious in the world, yet calamities and disasters stalk it without end. Or, as one man put it, is there too much God in Africa?' (Beatrice Kangai 'Is empty religiosity the dearth of African societies?' in *Daily Nation*, 24 August 2011, pp. 1-3).

⁴ One of the security issues are the youth groups considered to be criminal gangs, such as 'Super Power', 'Silly Blue', and *Sikujui* (Ki-Swahili for, 'I don't know you').

⁵ The full name is *barakāt al-shabāb al-mujahidin* (Arab., 'movement of the striving youth').

⁶ The allegation that *Al-Shabāb* (Arabic for 'youth') was behind the attack has not been proven. An official of one of the main mosques of Nairobi, whom I happened to encounter in his hometown of Lamu, in December 2012, suggested that Kikuyu traders and politicians may have been behind the atrocities, for economic reasons.

⁷ See for Westgate attack: Kenya's 'Little Mogadishu' fears backlash' (Abditifal Ibrahim) <http://www.bbc.co.uk/go/em/fr/-/news/world-africa-24222756>. Compare article in Dutch national daily *Trouw* (15 November 2013): <http://www.trouw.nl/tr/nl/4496/Buitenland/article/detail/3545020/2013/11/15/Na-Westgate-jaagt-Kenia-op-Somaliers.dhtml>.

1

Setting the Parameters

INTRODUCTION

In this chapter I will introduce the context of the present case study in Eastleigh, Nairobi (Kenya). Then I will discuss the main themes of the study, followed by the research question, the sub-questions and the hypothesis. In addition to the themes and research question, the methodology and methods used during the case study, and the structure of the book will set the parameters of the research.

THE CONTEXT OF EASTLEIGH, NAIROBI (KENYA)

Since I started visiting Eastleigh in 2009 it became gradually easier to reach the place, only a few kilometres away from Nairobi's city centre. Travelling via Limuru Road, where St Paul's University is located, and Muthaiga road, over the years, we were able to reach our destination more easily. Chinese road construction companies have recently finalised superhighways, connecting Muthaiga Road and Thika Road, from which Eastleigh is now directly accessible. As soon as we enter the estate, however, the road becomes potholed. To save our car from another visit to the garage, we always park at the entrance of Eastleigh at St Teresa's Catholic Church. At the church gate, some street boys, in tattered brown clothes and broken flip-flops, do not even seem to register the still rare phenomenon of a *mzungu*,¹ passing by accompanied by his Kenyan colleague. The Centre for Christian-Muslim Relations in Eastleigh (CCMRE) is difficult if not impossible to reach by car. So as part of our weekly exposure, we walk from First Street to Eighth Street. On our way, we pass numerous shops and malls with well-dressed shoppers and investors from Africa, Europe, the USA and elsewhere. The shops, shopping malls and kiosks, many decorated with Islamic religious expressions and names, are owned and operated primarily by Somalis.

Eastleigh, with its approximately 300,000 inhabitants,² is located east of the city. It is laid out in a chessboard-like street pattern. Eastleigh has been transformed in recent history by distinct waves of immigration, in particular after the Somali civil war of 1991. At present, Eastleigh represents one of the largest Somali diasporas. Shaped and influenced by the dominating presence of Somali traders, Eastleigh is one of the most intense and striking places in the capital city and is a hub of a global trade network. Eastleigh or *Islīi* as Somalis themselves refer to it, obtained the nickname ‘Little Mogadishu’ because it is a dislocated proxy seat of the government of Somalia, and due to the number of Kenyan Somalis and Somalis living in the area.³ But this nickname obscures the diversity of the estate. Eastleigh is more than ‘Little Mogadishu’. It harbours a plethora of people from different cultural and religious backgrounds.

There are mosques, churches and affiliated faith-based organisations (FBOs) in almost every building. Street preachers dot the estate, especially its lively markets. Islam plays a crucial role in Eastleigh, against the backdrop of Kenya’s Christian majority. Faith runs deep in Eastleigh, not only in a religious sense but also culturally, socially and economically. In terms of Christian–Muslim relations Eastleigh has much to offer. In this fluid urban ‘super-diverse’ context, human rights issues are particularly important. Infrastructural decay and personal wealth go hand in hand. For some, Eastleigh has become a place where basic human dignity seems to be at risk; for others, the estate is full of business opportunities. In sum, Eastleigh is a place of contradictions.

From the 2000s onwards, Eastleigh has attracted a number of researchers,⁴ investigating its history, its urban refugee issues, its social and economic development and religious practices (Carrier 2016: 18). The present study will focus on the relationship between religious practices and human rights activism in Eastleigh. What does a human rights culture among Christians and Muslims look like in this kind of context? There are dozens of human rights organisations in Eastleigh that take the plight of Eastleigh’s citizens seriously. In my search for a human rights culture, I will focus on Eastleigh’s civil society groups comprising non-governmental organisations (NGOs), community-based organisations (CBOs) and, for reasons of comparison between Christian and Muslim institutions, I will highlight a number of faith-based organisations (FBOs).

MAIN THEMES OF THE STUDY

The first important theme of this study concerns the discourse on the supposedly uneasy relationship between human rights and religion. On the one hand, a number of secular human rights scholars consider religious contributions irrelevant or even adverse to the human rights project. On the other hand, a number of Muslim and Christian scholars regard human rights as a secular concept, in the sense of an anti-religious set of rules and laws, which is therefore of no use to them. The question I will be asking is whether this supposed rift between universal, secular human rights and the major world religions is indeed unbridgeable.

Meanwhile, the mode of the encounter between Christianity and Islam appears to have become the subject of criticism. Discursive Christian–Muslim dialogue does not seem to provide the desired tool for developing sustainable, peaceful coexistence between these two religions. One wonders whether interreligious dialogue might be suffering from fatigue. If so, what would a possible remedy for this weariness with regard to discursive dialogue look like in practice? In this study, I will define human rights in terms of culture, and I will place the concept in an interreligious African local context. I will address the question whether a ‘localised’ human rights culture can serve as an agenda for a joint Christian–Muslim practice. Moreover, I will explore whether human rights culture at the local level of civil society can offer a relevant agenda to bridge the supposed gap between human rights and religion. Does such a joint interreligious endeavour at grassroots level have anything to offer that can enhance a universal human rights culture?

If religious adherents claim that their respective traditions teach peace as their core tenet, and if they assert that they can bring justice to the world at large, what role do they play when human dignity is violated? From a historical perspective, religions do not appear likely participants in the global discourse about, and struggle for, human rights. However, a more nuanced discourse on the role of religion with regard to human rights is needed. There is good, bad and very bad religion. According to Gerrie ter Haar, ‘[r]eligion is ambiguous by its very nature, but there are many cases in which it can be seen to provide people with the moral guidance and inspiration to try and change their lives for the better’ (Ter Haar 2011a: 7).

Human rights and religion: strange bedfellows?

The human rights theorist Michael Ignatieff mistrusts religious traditions with regard to human rights principles. He even doubts whether their capricious nature is capable of forming a sound basis for human rights at all and has qualified the grounding of human rights in religious thinking as a dead end. Instead, Ignatieff regards the human capacity for sympathy as a sufficient foundation for human rights. In his line of thought, religion is only an obstacle and should therefore be left out of any discussion on human rights. Ignatieff argues that foundational arguments rooted in Muslim moral ideas, for instance, would function as ‘a conversation stopper in Muslim societies’, whereas human rights can be more readily defended by claims about human dignity and about human beings being created equal by God (Ignatieff 2001: 54). The question I will raise is whether the conversation indeed stops there, as Ignatieff maintains, or whether the rapprochement between religion and human rights actually only begins with the notions of human dignity and of God’s creation of humankind. I will contend that there is more to say about the relationship between human rights and religions in general, and in interfaith relations in particular, especially at a local level. Louis Henkin is another staunch critic of a possible contribution of the religions to human rights. As a human rights scholar, former politician, and lawyer, Henkin features frequently in this discourse, especially with regard to the possible role of religions in the grounding of human rights (cf. Amesbury & Newlands 2008: 60-1, Mutua 2016: 166-7). While he acknowledges that religions have contributed to the definition of human rights through the idea of justice and ‘the idea of the brotherhood of man’, Henkin complains, ‘- alas- religion, the religions we know, have sometimes been more a danger to, than a foundation for, human rights’ (Henkin 1999: 34).

For many people the religion-versus-human rights antagonism seems only logical, especially in the post-9/11 era. Scores of studies have been published since the events of that day on the connection between religion and violence. ‘Texts of terror’ from Christian and Muslim scriptures have often been quoted in this context. Although scriptures themselves cannot abuse human rights, in a comparative perspective, in the Bible, according to Mohamed Salih and Bas De Gaay Fortman, ‘such texts [of terror] number 1,400 or so, more at any rate than the Qur’an’.⁵ Relying solely on sacred texts, however, is not sufficient to understand the behaviour of religious people. For an overwhelming majority of the world’s

population, personal convictions, religious rituals in the public space, and religious institutions continue to be important markers in addition to religious texts. These non-textual religious phenomena can also inform the present study about the interrelatedness of human rights and religion. While the disconnect between religion and human rights in times of rising religious extremism – be it in Hindu, Jewish, Christian or Muslim forms – has often been portrayed as obvious, this is not the whole story. In his book *Identity and Violence: The Illusion of Destiny*, Amartya Sen has pointed out that it is important for the prevention of violence that a religious individual has the possibility to choose from a multiplicity of identities. In reaction to Samuel Huntington's one-dimensional approach to clashing civilisations that are defined in religious terms, Sen underscored the reasoned choice between identities that individual people make within their particular culture. Addressing Muslim activism in the aftermath of 9/11, Sen asserts: 'While Islamic militants have good reason to deny all the identities of Muslims other than that of Islamic faith, it is not all clear why those who want to resist that militancy also have to rely so much on the interpretation and exegesis of Islam, rather than drawing on the many other identities that Muslims also have' (Sen 2006: 180).

Despite the reality of religion-instigated violence, from a historical perspective, religious traditions have been important in shaping early ideas and practices of human rights, and they will continue to be significant in that regard (cf. Tomalin 2013). In a pluralistic world, religions and worldviews cannot be avoided in the discourse on what human rights actually mean. In the words of De Gaay Fortman, '[i]n the contemporary context of globalisation and religious pluralism strategic sophistication is called for, not least in the intricate domain of religion, culture and human rights' (De Gaay Fortman 2007: 10). In this study I will address the viability of such a strategy by searching for features of a possible interface between human rights and Christianity, as well as Islam. Gerrie ter Haar argues that a reconsideration of the relationship between religion and human rights is required.

Religion, or religious belief, I suggest, while often seen as a root cause of violent conflict, is in fact a particular expression of human sentiments and ideas which are also present in secular cultures. In most cases the outbreak of violence cannot be ascribed to the nature of religious belief as such since, like all human institutions, religion can be used for constructive and destructive purposes. Its resources can be applied both for the protection

of human rights and for their violation. The challenge is to try and exploit the positive resources which are present in virtually all religions. (Ter Haar 2000: 20)

In this study, I will try to identify the constructive religious resources for a human rights culture. I will explore whether the relations between the religions under scrutiny have something positive to offer to a human rights culture in Eastleigh's civil society that enhances human dignity for everyone. Which possible positions for and against human rights can be discerned in the plurality of Christian and Muslim scholarly voices, in the recent past and in present discourses?

Exit, loyalty and voice

Three different approaches can be distinguished, in the ongoing discourse between religion and human rights. These options can be characterised as 'exit', 'loyalty' and, 'voice' (Van der Ven et al. 2004: 93). There are Muslims and Christians who opt out of the debate ('exit'), since they believe that the idea of human dignity and rights was already introduced into the world by their respective traditions hundreds of years ago. From a Jewish perspective, for instance, Norman Solomon has presented the 'Noahide covenant' – as developed by rabbis in the third century CE – as a theological-judicial theory that can be viewed as a kind of natural human law. In his view, the covenant with Noah (Genesis 9) creates 'theological space' for the concept of human dignity regardless of their acceptance of Scripture (Solomon et al. 2009: 180-3). The Muslim scholar Abu'l-A'la Mawdūdī (1903-79) from Pakistan argues that Islam has produced more just and equitable laws 1400 years before the Universal Declaration on Human Rights (UDRH) of 1948 (Mawdūdī 1993: 39). He regards human rights as proclaimed in 1948 as 'man-made' and therefore inferior to eternal divine injunctions. Mawdūdī opted out of the supposed secular impetus of the UDHR since he believes human rights are grounded and dependent on God's eternal rights.

Other human rights scholars with religious backgrounds have chosen to incorporate the human rights idea into their respective traditions ('loyalty'). They consider human rights principles to be compatible with their respective religious belief systems. The Iranian Nobel Peace Prize laureate Shirin Ibadi, for instance, sees 'no conflict between Islam and fundamental human rights' (Shirin Ibadi quoted by Abd al-Rahim 2005:

xxxvi). Muslim human rights scholars like Ibadi and others are loyal to the idea of an inherent human dignity, which they take for granted as a part of their respective traditions. Christian and Muslim scholars, such as Max Stackhouse and Bassam Tibi also express their 'loyal' perspectives on human rights. An intermediate option between these two possibilities of 'exit' and 'loyalty' is that of 'airing one's views' or giving 'voice' to the idea of human rights by asking critical questions and proposing alternatives perspectives and positions. The scholars who represent this critical-constructive stance, are hesitant to accept the universality of human rights but choose not to exit the discourse altogether. Thus, while acknowledging the human rights idea as such, they assert that Christianity and Islam have something to contribute to the human rights project, for instance by providing a spiritual 'grounding' for human rights, or by complementing responsibilities with rights. Also scholars such as Abdulahi Ahmed An-Na'im and the Christian theologian Jürgen Moltmann have constructively positioned their criticism within the idea of the ongoing universalising project of human rights.

I will discuss the validity of these distinct scholarly views, which, in spite of their differences, all seem to underscore the necessity of joining the discourse about human rights. Conservative Christian and Muslim thinkers who have opted out of the idea have argued at length why they refuse to accept human rights and proposed alternatives for the idea. Even the staunchest opponents of the Western concept of human rights, such as Mawdūdī, 'sense that the novel, but extraordinarily powerful language of human rights must somehow be moulded into Islamic thought' (cf. Oh 2007: 7). A special report of The Netherlands Scientific Council for Government Policy (WRR 2006) on human rights in the modern Islamic world, describes Mawdūdī's influence on 'political Islam'. The off-spring of his thought resulted in 'the revival of Islam' as a political factor in the Muslim world in terms of 'Islamic activism'. The authors search for reference points for the advancement of human rights within Islamic activism. According to them, Islamic activism has many different faces, one of them Islam as 'lived' in practice. They believe therefore that the terminology of 'activism' hints at possibilities within this trend that may be 'highly susceptible to change' (WRR 2006: 19). Islamic activism cannot be identified with an antidemocratic disposition and a denial of the value of human rights. Instead, they sketch a great diversity in Islamic activism and its relationship with democracy and human rights, and a

gradual rapprochement with these concepts (Ibid. 209). The authors of the study compare Islamic activism, which started in the 1970s, with 'human rights activism' in the West in the same period. They argue that the concept of human rights was only accepted within the Catholic Church since the Second Vatican Council (1965-67), while the confrontation was quite tense before that era. The Western experience teaches also that striving for human rights can provoke conflicts with the elites in authoritarian societies and protracted resistance from religious organisations. The discourse on human rights may be as important in its own right as are the possible desired outcomes. The various voices that come from different intra- and interreligious dialogues may have something to contribute to this discourse. Human rights scholar Bonny Ibhawoh defines 'discourse' as 'speech or writing understood from the point of view of the beliefs, norms and values that it embodies' (Ibhawoh 2018: 22). He interrogates 'the epistemological influences that shape these claims and ask why certain definitions and genealogies of human rights have gained dominance over others' (Ibid. 23).

Discourse analytical methods are especially useful in human rights studies because they allow us to pay better attention to the ways power, dominance and inequality are enacted, performed, reproduced and resisted – through text and talk – in different social and political contexts. Discourse analysis draws attention to the often subtly expressed power of dominant groups as interpreted in laws, rules, norms and habits. (Ibid.)

Human rights culture

In a shrinking world of economic, political and social-cultural international processes, an ongoing discourse on human rights can be perceived as a global trend. Human rights are often referred to as a global, sometimes even transcendent, culture. An-Na'im, for instance, speaks about human rights in terms of a global culture. He contends 'that it is only when we make religion and human rights synonymous in the thinking, feeling, motivation and action of given constituencies that we can have a global human rights culture' (An-Na'im in Ter Haar (ed.), 2011: 299). 'An-Na'im's view that religious believers must be understood in their own terms if religion is to become a source of inspiration rather than an obstacle to promoting a culture of human rights, applies to all religious traditions' (Ibid. 300). The Ghanaian scholar of religion, Abamfo Ofori Atiemo, in his book *Religion and the Inculturation of Human Rights* (2013),

searches for ‘a justifiable basis for universal human rights in local cultures’ (Atiemo 2013: 30). The book explores how religious and cultural values, ideas and symbols in contemporary Ghanaian society contribute to the theory and practice of human rights. He describes human rights as ‘dream values’ that need to be developed and inculturated in the various local cultures. Through a dialectical relationship between the idea of human rights and local cultures ‘a modest spread of human rights culture’ has been facilitated (Ibid. 43, 195, 198-9).

In the same vein, Australian scholar Jim Ife speaks of a culture of human rights. He distinguishes between a ‘natural rights tradition’, a ‘state obligations tradition’, and a ‘constructed tradition’. The three approaches differ in their view of the origins of human rights (God-given, legislature and lived experience, respectively), in the discipline that studies that particular tradition (theology, law, and anthropology, respectively), and in the kind of human rights practice that each tradition implies (activism, advocacy and community development, respectively). According to Ife, human rights culture is part of the constructed human rights tradition ‘from below’. In this tradition, human rights are contextual, dynamic and firmly grounded in lived experience. Human rights culture involves not just the passing of legislation, but has the potential for spreading the responsibility for human rights in the society as a whole ‘and for giving more people a sense of agency when it comes to human rights protection and realisation’ (Ife 2012: 76-7). ‘[D]eclarations are not deeds (...) A form or words by itself secures nothing (...) [W]ords pregnant with meaning in one cultural context may be entirely barren in another’ (John T. Noonan Jr., in Witte & Green 2012: 5). Written human rights norms are less relevant in contexts that lack constitutional processes that will give them actual meaning. In Ife’s interpretation, human rights culture is, therefore, bottom up, contextual and practical. In the context of Pakistan, Ali Salman raises the question whether religion can contribute to building a culture of human rights. He discusses some policies, facts and cultural patterns in Pakistan. By referring to ‘a synergetic course of action and thought’, he concludes that local cultural patterns and the rule of law are two important variables. ‘For the creation of a culture of human rights, then, the rule of law and formal education become more important than religion’ (Salman 2005: 200). In the context of South Africa, Bonny Ibhawoh speaks of ‘a uniquely South African human rights culture founded on universal principles and local cultural norms’ (Ibhawoh

2018: 231, cf. Merry 2006). Political and social developments in post-apartheid South Africa have included efforts to indigenise and localise universal human rights norms. Ibhawoh describes the process by which universal human rights norms become grounded in local communities as 'the notion of vernacularizing human rights' (Ibid. 225).

In the current study, I will adopt the definition of 'human rights culture' provided by Johannes van der Ven. He defines human rights culture as 'the culture of the human rights contained in declarations of human rights, hence the totality of beliefs, principles and values underlying these, and respect for that culture' (Van der Ven et al. 2004: 82). The concept of human rights culture has moral connotations and is distinct from the concept of human rights, with its strictly political and legal connotations. The term human rights culture in this definition leaves room for development and mobilising power (Ibid. 69). In his description of what human rights culture entails, Van der Ven has identified four interrelated aspects of human rights culture: (1) the principle ('publicity'), (2) the arena ('the public sphere'), (3) the object ('problems and conflicts') and (4) the aim ('the good life') (Ibid. 81-96). All of these aspects are relevant to purposes of the current study.

The principle of publicity (1) means that the discourse is not isolated or hidden but is a topic of shared concern in which all can participate actively. The question remains: Who is 'all'? Are people who are outside the confines of the nation state, such as refugees, asylum seekers, and illegal migrants also included? And if so, do the voiceless have enough voice, for instance through supranational bodies such as the United Nations High Commissioner for Refugees (UNHCR)? With regard to human rights discourses in the public arena (2), issues of possession, power relations and personal reputation should be kept in mind. The object (3) of human rights culture are problems and conflicts. They often concern issues regarding the relationship between different types of rights (civil, political, economic, sociocultural, and collective). Clashes of human rights often involve the right to life and the right to freedom of religion. The fourth aspect concerns the 'aim' (4) of human rights culture. Since the aim is the enhancement of 'the good life', human rights culture is not static but dynamic and reflective. Human rights culture therefore needs constant reflection on the way it is applied in demographically ever-changing populations. After all, human rights are not a purely academic issue. They are, or should be, rooted in the daily lives of real people in

real situations. As Van der Ven has argued, ‘in daily praxis we cannot wait indefinitely until the academy has reached consensus; we have to make decisions and act in the day-to-day contingencies of every life’ (Ibid. 94).

Human rights culture, therefore, is applied in situations in which people have to decide on a particular course of action. As a culture, human rights insist on both practical and theoretical truth. ‘In all the decisions we take in daily life, day-to-day practice must show whether or not the decision “works” – works in the sense of promoting the ‘good life’, of promoting freedom, equality, solidarity’ (Ibid. 95, 96). Below, I will discuss this more active and practical dimension of human rights culture in terms of *diapraxis*. First, however, I will describe the present status of interreligious dialogue in the context of Kenya.

‘Dialogue fatigue’

Over the last few decades, Christian–Muslim dialogue has become popular in nearly every corner of the globe. Kenyan Muslims and Christians have engaged in dialogue even more intensively since the bombing of the Nairobi American Embassy in August 1998, three years before 9/11. The dialogue gatherings, however, seem hardly to have met their objective of improving mutual understanding, or of ‘working misunderstanding’ (Wijsen 2007: 174). Kenyan scholar Anne Kubai speaks of ‘dialogue fatigue’ (Kubai & Adebo 2008: 14). The Kenyan Muslim scholar Hassan Mwakimako has also noticed this ‘dialogue fatigue’ in his academic experience. He has states that the manifold dialogue sessions do not address actual issues at stake, but are ‘perpetuating cosmetic gatherings in posh hotels, leaving the participants with their time old mutual prejudices’ (Mwakimako 2007a: 296). According to him, the real issues that define interfaith relations are the bitter exchanges and actual violence that occur, such as the burning down of mosques and churches. Lissi Rasmussen of Copenhagen University has similarly acknowledged that Muslims sometimes criticise the almost ‘ritualized way’ in which Christians talk about the necessity of dialogue, without advancing beyond a cliché. According to her, the notion of discursive dialogue needs to be translated into practice (Rasmussen 2011: 60).

From discursive dialogue to diapraxis

In addressing the question of how religions should deal with one another, Alan Race introduced in 1983 a classification into ‘exclusivism’, ‘inclusivism’ and ‘pluralism’. In his book *Christians and Religious Pluralism: Patterns in the Christian Theology of Religions*, he explains how exclusivism rejects the existence of salvation in other religions, inclusivism accepts the existence of salvation in other religions, but mediated by Christ alone, and pluralism recognises several independently valid religions without the mediation of Christ (Race 1983). To pluralism, interreligious dialogue was added. In 1988, Lissi Rasmussen introduced the term *diapraxis* into the field of Christian–Muslim interreligious dialogue. She bases her observations on field studies of Christian–Muslim coexistence in Tanzania, Nigeria and Denmark. Rasmussen defines diapraxis as ‘co-operation between people of different faiths. After working together in relation to common challenges, discursive dialogue may follow as a reflection on common practise’ (Rasmussen 2007: 177). She defines diapraxis as a relationship in which a common praxis or dialogue-as-action is essential. Diapraxis implies an anthropological contextual approach to dialogue as a meeting point between people who are trying to reveal and transform the reality they share (Rasmussen 2011: 59). The shift in dialogue initiatives and thinking ‘from above’ to diapraxis ‘from below’ is focused more at the grassroots level (Rasmussen 2007: 180). Diapraxis includes both secular and religious discourses in the public sphere (Rasmussen 2011: 62).

The South African Muslim theologian and activist Farid Esack has developed the notion of ‘liberative praxis’ (Esack 1998: 203), which comes close to Rasmussen’s terminology of diapraxis (Leirvik 2002: 410, 411). In the context of South Africa’s former apartheid regime, Esack has reflected on the joint solidarity between Muslims and Christians against oppression. In his *Qur’an, Liberation & Pluralism: An Islamic Perspective of Interreligious Solidarity against Oppression* (1997), Esack has responded practically to the compromised human dignity of downtrodden people in the specific context of South Africa. He has emphasised that the issue of interfaith solidarity and collaboration with the religious other is preceded by the Qur’an-based acknowledgement of religious diversity (Esack 1998: 184). In his plea for interreligious solidarity with the destitute, he has reassessed the Qur’anic notion of *wilayah* (Ibid. 180), the alliance or relationship with the religious other. Meaningful interreligious

encounters lie in the common intercultural practical response to the struggles for the very dignity of downtrodden people in a specific context, more so than in ‘the middle class discussion on the finer matters of faith, in isolation from liberative praxis’ (Ibid.). According to him, ‘the option of solidarity with the poor and the oppressed, far from being an option for the particular, is really one for inclusivism and universality’ (Ibid. 202).

The Qur’an roots its own pluralism in a common struggle against oppression and injustice. Rather than a fashionable interreligious dialogue, we see an articulated solidarity with the marginalized and exploited that crosses narrow doctrinal lines. The basis of pluralism being postulated in the Qur’an is, one may say, liberative praxis. (Ibid. 203)

Diapraxis keeps a balance between theory and practice, since theory without practice is armchair wisdom, and practice without theory is anti-intellectual and can be dangerous. In the words of Jim Ife: ‘[t]o talk about human rights means to talk both theory and practice at the same time and to be constantly weighing each in terms of the other’ (Ife 2014: 216). The goal of such a theory grounded in practice is, ultimately, the protection of human rights. In the light of Ife’s thinking about human rights, I believe that the importance of such a grounded theory also applies to interreligious diapraxis regarding human rights. In order to create societal impact, interreligious dialogue has to be applied in practice. The reflection on interreligious dialogue-in-practice, is what I define as diapraxis.

Third party

In order to remain relevant, Christian–Muslim diapraxis needs a critical impartial third-party perspective from outside the religious realm. The Iranian Muslim scholar Hossein Nasr, has recognised that, ‘much of the dialogue carried out between Christians and Muslims today is coloured by the presence of that silent third partner: anti-religious secularism’ (Nasr in Chapman 1998: 189). He portrays this silent ‘third partner’ in the context of human rights and has perceived it rather negatively as anti-religious. Hans Küng has made a similar but opposite case for a ‘third way’ in the form of ‘a new ecumenical paradigm of secularity viewed against a religious background, as a *via media* between a religious re-Islamization, which holds little future promise, and an anti- or non-

religious secularization, which is equally unpromising, given the ‘dialectic of the Enlightenment’ (Küng 1993: 56). Whereas Nasr seems to regard ‘secularism’ in terms of anti-religious antagonism, Küng has described ‘secularity’ more positively and has given it a mediating role to play in interreligious relations.

Frederic Mvumbi also appears to be positive about recent developments in Christian–Muslim relations. For centuries Christianity and Islam opposed each other, each declaring to have the monopoly of the ultimate truth, and Christian–Muslim dialogue was hardly encouraged. However, ‘the modern world broke up this double monopoly on ultimate truth, becoming as it were a third party’ (Mvumbi 2009: 118). This ‘third party’ of ‘the modern middle mind’, by means of natural law – or ‘the work of reason’ as Mvumbi calls it – can help to foster the enhancement of authentic interreligious relations in East Africa. While Mvumbi speaks of natural law as a third party or a means to ameliorate cross-cultural and religious relations, the French scholar of Islam, Jacques Jomier, seems to have arrived at the idea of a third party as well. To reach such a point of interreligious joint rules of conduct, Jomier proposes an intermediate role for the Universal Declaration of Human Rights in terms of the right to truth and respect for ‘the other’. Speaking of joint rules of conduct as part of respectful Muslim–Christian relations, Jomier contends that:

[R]ivalry between religious groups is fatal. Even if many pages of the past were far from being ideal, and some of them were regrettable (but is there any group of human beings which is beyond criticism?), it is time to be open to the future and to join together in discovering rules of conduct which both take account of the right to truth and respect the opinions of others (...) For the moment there is the United Nations Declaration of Human Rights. (Jomier 1989: 3)

Jomier appears to use the concept of human rights as a moral yardstick to measure religiously motivated behaviour in terms of ‘rivalry between religious groups’. Abdolkarim Soroush holds up human rights as the yardstick for governance of the Islamic State, as the criterion that guarantees the state’s religious as well as its democratic nature. ‘This appeal to external (that is, extra-religious) criteria to evaluate religious fulfilment to its proper purposes, is perhaps the most striking and controversial aspect of Soroush’s thought. It constitutes an invitation, an imperative to cross-cultural and cross-disciplinary dialogue’ (Appleby

2003: 214). Thus, human rights become an extra-religious criterion or third party for interreligious dialogue.

Can this critical role of human rights standards as a third party also be transferred to the framework of Christian and Muslim relations? In other words, can respect for human rights culture, comprising beliefs, values and principles underlying human rights declarations function as a practical device to enhance interreligious relations in Eastleigh?

RESEARCH QUESTION, SUB-QUESTIONS AND HYPOTHESIS

I will explore the possibility of a joint practical commitment to address human rights issues in context of Eastleigh as a way forward for Christian–Muslim relations. After describing the more general discussion on the possible rapprochement between human rights and religion, I will focus on the local Kenyan human rights culture in the civil society of Eastleigh in particular, in an attempt to find an answer to the following research question and sub-questions.

Research question

In what ways can human rights be a relevant third party to further Christian–Muslim relations in an African local context?

Sub-questions

- (1) How can we analyse, interpret and explain human rights in the broader framework of Christian–Muslim relations?
- (2) Which possible contours and features of a human rights culture can be identified in the interreligious context of Eastleigh?
- (3) Do Eastleigh’s NGOs and CBOs actually address human rights culture?
- (4) How do Eastleigh’s FBOs contest, define, and seek to transform Christian–Muslim relations in the light of human rights culture?

Hypothesis

A global discursive dialogue about universal human rights that are often regarded by scholars and policymakers as ‘anti-religious’ and as an international legal standard ‘from above’ can coexist with a more practical approach to a human rights culture ‘from below’. At the local level of

Eastleigh's civil society, comprising religiously motivated organisations and individuals, a localised human rights culture can be utilised as a third party for Christian–Muslim relations in the joint struggle for the human dignity of its residents. It is my hypothesis that human rights-based activism by both Muslims and Christians at the grassroots can provide a remedy for the fatigue from which interreligious discursive dialogue seems to suffer. Moreover, I want to explore whether human rights culture can help to further a joint, interreligious practice or *diap Praxis* by embedding the acknowledgement and observance of universal rights more deeply in a local context, as in this case.

METHODOLOGY AND RESEARCH METHODS

The research carried out for this study is qualitative. I have used the definition of qualitative research that the social scientist Norman Denzin proposes in the *Handbook of Qualitative Research*: ‘a situated activity that locates the observer in the world’ (Denzin & Lincoln 2000: 3). Qualitative research consists of a set of interpretive practices that makes the world visible. These practices turn the world into a series of representations, including field notes, maps, interviews, conversations, photographs, recordings and memos of the researcher. At this level, qualitative research involves an interpretive approach to the context it explores. ‘This means that qualitative researchers study things in their natural settings, attempting to make sense of, or to interpret, phenomena in terms of the meanings people bring to them’ (Ritchie & Lewis 2012: 3). The methodology for my research has been derived from Denzin’s *Community-based Action Research* (CBAR), as further developed by Ernest Stringer. Denzin (1978: 292) introduced the metaphor of ‘lines of action’, as part of triangulation, that he defines as ‘the use of multiple data collection technologies, multiple theories, multiple researchers, multiple methodologies, or combinations of these four categories of research activities’ (Berg & Lune 2012: 6). Following Denzin (2010: 419–27), Berg and Lune have explained that ‘triangulation includes multiple theoretical perspectives and multiple analysis techniques in addition to multiple data-collection procedures’ (Berg & Lune 2012: 8).

In his study of the methodology of research in the field of Muslim–Christian relations, Frans Wijsen (2013: 131) advocates the ‘complexity theory’ of intergroup (particularly interreligious) relations. ‘Complexity theories stress that systems are open, dynamic, non-linear and – to a cer-

tain extent – chaotic’. Following Fairclough, Wijzen (Ibid. 63) uses a variety of theoretical perspectives and methods in his socio-cognitive discourse analysis that has a ‘multi-perspective and poly-methodological approach’ (Ibid. 16).

In his study of interreligious relations, he relates the complexity theory to ‘practice theory’ as used in various disciplines, ‘including those that study interpersonal, intergroup and international relations’ (Ibid.). ‘There is always a combination of factors that influence the construction of relations between believers: psychological (personal features), political (power struggle), economic (market mechanism) and sociological (social mobility). The religious perspective is only one of these’ (Ibid.). This insight of religion being only one factor among others is highly relevant for Christian–Muslim relations in Eastleigh. This economic hub in East Africa is gaining in economic and political significance in Nairobi through its influential business communities, while it simultaneously hosts huge groups of refugees from neighbouring countries who are struggling to survive. The socioeconomic circumstances influence the *couleur locale* of interreligious relations. In Eastleigh, economic and sociopolitical factors determine whether Muslims and Christians find common ground or become competitors. While Wijzen has chosen a more narrative, linguistic approach as a methodology in his research – including such methods as focus group discussions – I have opted to follow Denzin, Berg and Lune by conducting my case study under the broader umbrella of CBAR, ensuring ‘a wide combination of elements, such as direct observation, various types of interviewing (informal, formal, semiformal), listening, document analysis (e.g. brochures, leaflets, letters or newspaper clippings), and ethnomethodological experimentation’ (Berg & Lune 2012: 7, 8).

According to Stringer, community-based action research (1) engages human relationships, unlike the objective approach of traditional scientific research, and includes all those affected by the research (Stringer 1999: xx); (2) is dialogic and hermeneutic (meaning-making), ‘gives voice’ to people and thus empowers them instead of seeing them as research objects (Ibid.); (3) provides ‘a model for enacting local, action-oriented approaches to inquiry, applying small-scale theorizing to specific problems in specific situations’ (Ibid. 10); (4) makes the experiences of ordinary people directly available to policymakers (Ibid. 168), thus having ‘change’ as an intended outcome (Ibid. 209); and, (5) advocates ap-

proaches to inquiry that engage ‘a feminist, communitarian moral ethic, organized by terminologies as: the community; dialogical communication; transformation; common good and universal human solidarity; stress on dignity, care, justice and interpersonal respect’ (Ibid. 204, 205).

In sum, Stringer’s rather idealistic approach seeks to engage Denzin’s social scientific practices to ensure that it ‘will move closer to a sacred, critically informed discourse about the moral, human universe’ (Denzin 1997: xviii). ‘We need a community’ he states, ‘that honours and celebrates paradigms and methodological diversity, and showcases scholarship from around the world. As fellow travellers, we need research agendas that advance human rights and social justice through qualitative research’ (Denzin 2010: 36). The CBAR approach of the social justice and human rights perspective, in combination with its dialogical and local, action-oriented aspects, makes it a particularly useful tool for my research.

Fieldwork methods

As a researcher, I am aware that my presence in the field influences that setting. Denzin writes that reactive effects of observation are the most perplexing feature of participant observation, since the presence of an observer in any setting is often a ‘foreign object’. The creation of the role of participant observer inevitably introduces some degree of reactivity into the research setting (Denzin quoted by Berg & Luce 2012: 204). During the five years of visiting Eastleigh, I have struggled to represent this ‘foreign object’, never sure of how my presence is interpreted by Eastleigh’s residents, in an often-political context of suspicion. In respect of this challenge I have found the anthropologist Susan Hirsch’s observations helpful. On the basis of her case studies in Kenya and Tanzania on matters related to Muslim Family Law, she has suggested helpful methods from a feminist perspective to help negotiate thorny issues in contemporary research, such as, ‘the methodological difficulties of legal consciousness; the problematic relationship between the researcher and research subject in ethnographical field work; and the blurred boundaries between scholarship and activism, especially in socio-legal studies’ (Hirsch 2002: 13).

In order to minimise the consequences of my foreign identity, I have regarded the role of my gatekeepers (‘one who grants – or denies – access to the research field’) as extremely important. My colleagues Joseph

Wandera and Abdulaziz Merabaqsh Bunni in particular, as well as students from both St Paul's University, and representatives of the various FBOs and NGOs helped me in gradually becoming a cautious participant observer in Eastleigh's community. I have discussed my observations with my Kenyan Somali Muslim and Kenyan Christian colleagues and students after most of the research activities I carried out.

As mentioned earlier, I have been visiting Eastleigh on a regular basis since 2009. Together with colleagues, I walked the streets and later 'mapped' them. I observed Eastleigh's context without any specific agenda, except to build a network for St Paul's University's Centre for Christian-Muslim Relations in Eastleigh (CCMRE). I started this Centre in 2010 together with my Kenyan colleague Wandera to create a basis for exposure to a multifaith context for Islam and Christian-Muslim Relations (ICMR) students, and international and national scholars in the field of Christian-Muslim relations. In 2011 I began to investigate the possibility of using Eastleigh for the purpose of my research. Over the years, I collected literature (academic articles, reports, newspaper articles, leaflets, pamphlets, etc.) about the estate. Moreover, my colleagues and St Paul's students produced videos for the CCMRE while participating in *mihadhara* (public preaching) – including a video in the aftermath of an attacked church – and conducted interreligious programmes at the Centre. We produced a publication entitled *Mapping Eastleigh for Christian-Muslim Relations* (Peter, Wandera & Jansen 2013). During that mapping exercise, carried out from November 2012 to February 2013, we collected data on such subjects as social justice, economic and labour rights through questionnaires and through street interviews by Muslim and Christian students. In the light of CBAR, the mapping method can be considered as Participatory Action Research (PAR). I gratefully integrate the results into the present study by using these data produced, and the analysis of data by our Indian expert colleague Peter in collaboration with the participating students.

In August 2013, I started a more systematic approach to my case study. In order to analyse relevant issues, I began recording meetings and started doing (semi-structured) interviews by taking notes. I intended to conduct my research by taking a 'dialogical-practical' and CBAR approach, using the multiple methods (participant observation, semi-official interviewing, snowballing and networking). It was my intention not to test a theory by doing fieldwork, but to explore a new paradigm,

from discursive dialogue towards exploring Muslim-Christian diapraxis. In line with Jane Ritchie and Jane Lewis, I have taken a pragmatic approach. Ritchie and Lewis believe that quality and rigour in research practice have more to do with choosing the right research tools for the job than with limiting ourselves to combining only those research methods that are viewed as philosophically consistent (Ritchie & Lewis 2012: 21).

STRUCTURE OF THE BOOK

After the acknowledgements and the foreword, which explain the motivation for the study, the present chapter highlights the main themes of the research, the research questions and hypothesis, and it introduces the methodologies and methods used. The local context of Eastleigh is also introduced. This introductory chapter is followed by two chapters of a more theoretical nature. Chapter 2 describes the epistemology of human rights and human dignity and proposes Amartya Sen's social choice theory as a suitable conceptual framework for interpreting the interface between religion and human rights. Chapter 3 places social choice theory in an interreligious perspective, using Sen's threefold criticism of human rights in a Christian–Muslim comparative perspective. Chapters 2 and 3 will answer the first research sub-question: How can we analyse, interpret and explain human rights in the broader framework of Christian–Muslim relations?

Chapters 4, 5, and 6 introduce the reader to the case study of Eastleigh. Chapter 4 describes the particular context of Eastleigh. The distinct socioeconomic and political contexts are mapped, with a focus on cultural and religious phenomena. Chapter 5 describes the search for a local human rights culture which is embodied by several human rights NGOs and CBOs as discerned in Eastleigh. In Chapter 6, I focus on four of Eastleigh's FBOs and their possible contribution to human rights culture in the light of interreligious interaction. Chapters 4, 5, and 6 will address sub-questions 2, 3, and 4, respectively: Which possible contours and features of a human rights culture can be identified in Eastleigh in an interreligious framework? Do Eastleigh's NGOs and CBOs actually address human rights culture? And, how do Eastleigh's FBOs contest, define and seek to transform Christian–Muslim relations in the light of human rights culture?

On the basis of the answers to the four sub-questions, the theoretical (Chapters 2 and 3), and empirical (Chapters 4, 5 and 6) parts of this study converge in the concluding Chapter 7. The conclusion addresses the main research question: In what ways can human rights be a relevant third party to further Christian–Muslim relations in an African local context?

NOTES

¹ Ki-Swahili, literally ‘a person who wanders’, referring to a white person, European, or foreigner.

² The number of residents of Eastleigh varies from roughly 100,000 (*Refuge Point* 2011) to over 300,000 (Micheni 2010), depending on the neighbourhoods that are counted as part of the estate. Moreover, the issue of refugees without legal status and visiting business people make it hard to give exact figures. ‘Eastleigh and its environs with 348,778 inhabitants has become an extension of what was the Republic of Somalia before it crumbled into anarchy in 1991. The population figure covers Eastleigh North, Air Base, Eastleigh South, California and Kiambu (Micheni 2010, cf. Carrier 2016: 54).

³ Kenyans, for instance, call the area ‘Mogadisho Kidogo’ (Ki-Swalihi, ‘Little Mogadisho’). Many Kenyans do not consider the place to be part of Kenya, though of course it is both geographically and physically (cf. Anna Jacobsen 2011: 83, note 47).

⁴ I attended a workshop on Eastleigh and Somalis in urban Kenya in September 2014. A host of national and international scholars, politicians, businessmen, and practitioners attended the three-day event at the Rift Valley Institute in Nairobi.

⁵ Cf. De Gaay Fortman et al. 2009: 5–6. The authors refer to the genocide by Moses in Exodus 32:27–18 and Matthew 10:34 where Jesus encounters animosity.

2

'Social Choice' as Theoretical Framework

INTRODUCTION

I have chosen Amartya Sen's social choice theory as the theoretical framework for my literature review and case study. On the basis of Sen's theory of justice,¹ my assumption is that it is possible to bring together elements of a theory of human rights and cross-cultural communication. After briefly introducing Amartya Sen and outlining some key issues of social choice theory, I will focus on Sen's description of three major critiques of the idea of human rights. They are the legitimacy critique (1), the coherence critique (2), and the cultural critique (3). In Chapter 3, I will use this threefold criticism to describe Muslim, Christian, African, and Asian scholarly voices on human rights with regard to the issues of the foundationalism of human rights, the correlation between rights and duties, and the debate about cultural relativism versus universalism of human rights, respectively.

Before I describe and apply Sen's framework, I will first elaborate on the philosophical and religious underpinnings of the idea that humans have dignity and rights. Although the Universal Declaration of Human Rights (UDHR) of 1948 can be considered to be the concrete starting point of human rights from an international legal perspective, the philosophical and moral idea of human dignity and rights preceded this primarily legal document by many centuries and can be found in many distinct cultures and religions.

AN EPISTEMOLOGY OF HUMAN DIGNITY AND RIGHTS

There is something deeply attractive about the idea that any person anywhere in the world has an inherent dignity, irrespective of citizenship, class, gender religion, etcetera. In its preamble, the UDHR presupposes 'the inherent dignity...of all members of the human family' and speaks

of 'the dignity and worth of the human person'. The Vienna Declaration and Programme of Action (1993) reaffirms human dignity by insisting that 'all human rights derive from the dignity and worth inherent in the human person'. The African [Banjul] Charter on Human and Peoples' Rights (1986) states in its preamble that 'fundamental human rights stem from the attributes of human beings' upon which 'the essential rights of man' are based. These attributes are embedded in the inherent human dignity from which human rights are derived.

The idea that human persons have an inherent dignity is 'in part, the idea that there is something about each and every human being, simply as a human being, such that certain choices should be made and certain other choices rejected; in particular, certain things ought not to be done to any human being and certain other things ought to be done for every human being' (Perry 1998: 37). Martha Nussbaum has related this 'something about each and every human being', to the Aristotelian notion that there is something 'wonderful and wonder-inspiring' in complex forms of human nature. Elsewhere she has elaborated on this 'wonder-inspiring' notion.

The idea of dignity has broad cross-cultural resonance and intuitive power. We can think of it as the idea that lies at the heart of tragic artworks, in whatever culture (...) For we see a human being as having worth as an end, a kind of awe-inspiring something that makes it horrible to see this same person beaten down by the currents of chance – and wonderful, at the same time, to witness the way in which chance has not completely eclipsed the humanity of the person. As Aristotle puts it, 'the noble shines through'. Such responses provide us with strong incentives for protecting that in persons that fills us with awe. (Claassen 2014: 245)

This description still leaves us with the question what this 'awe-inspiring something' of the human being actually means. Gerrie ter Haar has emphasised 'the importance for all of us, in and outside the Western world, of considering the fundamental question that underlies all human rights thought: what is a human being?' (Ter Haar & Busuttil 2003: 90). According to her, the 'human' dimension of the concept is often disregarded in the human rights discourse. For many people in the world 'the spiritual dimension is an essential part of the human condition', which means that this religious or spiritual aspect cannot be ignored in debates about human rights and dignity (Ter Haar 2011b: 305). In many African texts, for instance, 'dignity' is discussed in the context of the sometimes

overused concept of *ubuntu*. It refers to meanings such as ‘humanness’ or ‘person’ often with communitarian connotations: ‘I am because we are’. According to Ibhawoh, ‘Ubuntu represents a unique paradigm for understanding and articulating the notion of dignity. To its proponents, Ubuntu cannot be reduced to secular or religious conceptions of dignity or to simple-minded communitarianism’ (Ibhawoh 2018: 32). Legal scholar Makau Mutua has contended that the language of rights should be transformed, by emphasising a discourse about human dignity.

The contest about human rights is whether the medium of rights – and the specific iteration of western liberal jurisprudence – is a language comprehensive enough to express and mediate diverse and particular norms of human dignity. If so, where does that leave other ‘languages’ of human dignity? (...) Should human rights – with their European cultural and philosophical roots – be celebrated as having attained universal, cross-cultural legitimacy? Are they elastic enough to accommodate other expressions of human dignity?

In some non-Western contexts, respecting the autonomy of the individual other is, therefore, probably not enough. ‘African texts that address human rights often suggest that it is in the virtue of having a “divine spark” that human beings have a dignity of a sort that is capable of grounding human rights’ (Metz 2014: 312). Again in the words of Mutua,

Human dignity, unlike human rights, is not just a language of legal rights, but a concept that encompasses empathy, hospitality, and the inner worth of human beings. It is akin to the philosophy of *ubuntu*, a term from Bantu languages of Africa which refers to human-ness. In this context, new social movements for new and emerging rights have arisen. (Mutua 2016: 140)

What does ‘the human condition’ or human-ness mean, if we approach this question from a negative perspective? By ‘othering’ fellow human beings through subhuman terminology, certain people have been denied their dignity. Jews were branded subhuman during the Holocaust, and Arabs were labelled ‘rats’ by French settlers during the anti-Arab pogroms in Algeria in the 1950s. Human beings were degraded by being called ‘cockroaches’ during the Rwandan genocide in 1994, to mention only a few examples (Ter Haar 2000: 18). Perpetrators of human rights violations have often made their actions seem justified by effectively robbing their victims of their humanness. Deeming the other to be sub-

human, as also happened under apartheid in South Africa and during the Serbian actions in Bosnia, makes it easier to avoid having to recognise people's human dignity (Ife 2014: 18).

Jim Ife has contended, in line with Ter Haar, that when it comes to the combination of 'human' and 'rights' in human rights, not only are *rights* a problem, but so is the notion of *human*. He argues that there have been different understandings of what counts as human in different times and places. There is no homogeneous universal 'ideal type' of *the* human. This means we have to contextualise both rights as well as what it means to be human. According to Ife, the concept of human rights is in need of a post-Enlightenment reconstruction of humanity that goes beyond the Western positivist worldview. It is important therefore, in his view, for human rights scholars and practitioners to seek wisdom from people of non-Western traditions, who have different constructions of humanity and what it means to be fully human. Ife concludes that 'a post-Enlightenment approach [to human rights and dignity] must find a place for the spiritual and the sacred' (Ibid. 311). In the context of this study, I will be looking for non-Western ideas about what it means to be fully human and what is considered the inner core of humanness, in relation to human dignity and rights. For instance, in the words of the Ghanaian scholar of African tradition Kwame Gyekye:

The African view of humanity and the value that is attached to it probably derives from the belief that humanity is a creation of God. As an Akan maxim expresses it: All human beings are children of God; no one is a child of the earth. The insistent claim made in this maxim is based on the belief that there must be something intrinsically valuable in God: the human being, considered a child of God, presumably by reason of having been created by God and having in his or her nature some aspect of God, ought also to be held as of intrinsic value, worthy of dignity and respect. The general African belief that human beings are created by God – that they are children of God – most probably lies at the basis of values attached to humanity and the unity by the African people. And, their having a speck of the divine nature (i.e. soul) in them constitutes all human beings into one universal family of human kind. (Gyekye 2002: 24)

The connotation of human beings who are created by God is thus not restricted to Christianity and Islam only. As Gyekye illustrates, in African traditional religions human beings are depicted as children of God, and

they share aspects with the Divine that endow them with intrinsic worth and dignity.

It is therefore inadequate to look at the history of human rights solely through the lens of secular law and legal rulings. Critics of the narrow definition of human rights in terms of international *legal* standards alone, have spoken about ‘the iron cage of legal instrumentalism’ (Annelise Riles 2006), or the ‘juridification of human rights’ (Gerrie ter Haar 2011b: 305). In addition to the legal standards, at the root of the human rights idea lie moral, cultural and, religious concepts such as ‘natural law’, Greek mythology and philosophy, Western philosophy, and Judeo-Christian precepts like the Ten Commandments.

Amartya Sen, who I will introduce shortly, has traced the idea of democracy and related ideas of justice and human rights back to Indian contributions. Gautama Buddha (fifth century BCE), for instance, developed philosophical connotations of ‘asymmetry of power’ and ‘imperfect obligation’. The Indian ruler Ashoka (third century CE) already introduced the concept of freedom of religion, and the Mughal Emperor Akbar (fifteen century CE) promoted interreligious dialogue, *avant la lettre*. Sen has therefore contended, while underscoring that Greece was of huge importance with regard to ideas of democracy and human rights, that these ideas influenced Asian cultures such as India and Iran more than they impacted European on countries like France and Germany. According to him, ideas such as Sophocles’ divine rights, must currently be considered part of the common human heritage, and not as the monopoly of any one civilisation in particular (Sen 2009: 330). Sen’s cultural critique of human rights, the issue of human rights universalism versus cultural relativism, will be addressed later in this chapter.

It was the Greek philosopher and poet-writer Sophocles (b. 495 BCE) who, through his mythology and on the basis of ‘higher right’, created the ‘first human rights activist’: *Antigone*. Antigone risked her life by challenging the ordinance (*kerugma*) of the ruler Creon, by letting the ‘rights of the gods’ prevail. Going against the command of the ruler, she buried her brother Polyneices. It was the divine ‘must’, ‘*dei*’ in Greek, that made Antigone perform her sacred duty, regardless of the consequences of her action.² She buried her brother, and for this offence she was immured alive. Antigone appealed to a higher, divine right to defend her conscience against the worldly decree of the autocratic state represented by Creon. In doing so, she differentiated between man-made law and divine

law. To her mind, if there is conflict between the two, the latter should prevail over the former. The legislation of the state is 'naturally' restricted by 'the rights of the gods'.

A similar appeal to a 'higher right' can be found many centuries after Antigone, in the American *Declaration of Independence* of 1776. In this document, the American colonists declared themselves independent from the British motherland. In the same manner in which Antigone had declared herself unable to obey Creon's rule, the American colonists resisted the British Crown. Their dissatisfaction with legal procedure justified their act of separation: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are Life, Liberty and the pursuit of Happiness'. The Declaration of Independence proclaimed the 'truths' that (1) all men are born equal; and, (2) all men are endowed by their Creator with certain inalienable rights, i.e.: to life, liberty and happiness. Just as Antigone had long before appealed to the 'rights of the gods', the colonists derived their rights from God. God, their Creator, had given them, as His creatures, the law of fundamental equality. The God-given equality that the colonists proclaimed to be the grounds for 'inalienable' rights vis-à-vis the British Crown, would later become the basis for human rights covenants and constitutions as we know them now. However, the idea of a 'higher right' sanctioned by the divine Creator, which appeared both in Sophocles' tragedy *Antigone* and in the American Declaration of Independence, seems recently to have been abandoned. After the Second World War, human dignity appears no longer to be derived from natural law as originally guaranteed by the transcendent power of the Creator but is embedded in the Enlightenment philosophy of 'god-less' human reason.

This tendency of separating the divine from the human can itself also be traced back to early Greek philosophy. Protagoras (b. 490 BCE), a contemporary of Sophocles and also a Greek philosopher, coined the principle of *homo mensura*: 'the human person is the measure (of all things)'. Instead of 'higher, divine law', it was his philosophy that won the day and has since become the foundation of a 'god-less' anthropology of the Enlightenment. 'Higher right' became 'natural right', not in the sense of rights restricted by the rights of the gods, or God, but 'natural' in the sense of 'positive', 'rational'. Protagoras' *homo mensura* has become the yardstick of the human condition and of conscience or 'common

sense'. 'Higher right' seemed to have lost its theistic foundation altogether. The new paradigm of 'higher right' is located in the reasonable, individual autonomous human being.

Western philosophical concepts: Grotius, Lock and Kant

Long after Protagoras, three Western philosophical concepts that similarly dispense with the divine were formulated, by Hugo Grotius, John Locke and Immanuel Kant. These philosophers developed the Enlightenment principles of the 'law of nations', 'humanistic theology', 'self-preservation', and 'autonomy', principles which later influenced the UDHR as a part of international law.

Hugo Grotius (1583-1645) is often regarded as the founding father of '*ius gentium*' or what is now known as international law. In his 'humanist theology', human reason and autonomy received priority over divine injunctions, *etsi Deus non daretur*, 'as if God does not exist'. It seems here as if religion has become 'secular'. Religion is no longer part of natural law which is linked to Divine, transcendent and universal law. Grotius developed his humanistic theology in protest against the prevailing rigid ecclesiastical law. Grotius' 'humanism' focused on the human being at the expense of the church's legislative power. He situated natural law in human nature itself. He still regarded nature as divine, but it was no longer dependent on one specific revelation. In the world as Grotius perceived it, there were many revelations in addition to the Western one, and they all deserved an equal place under the umbrella of human reason.

John Locke (1632-1704) is generally regarded as the pioneering thinker with regard to individual liberty as it is expressed in the UDHR. His famous work *The Second Treatise of Government* (1689) is considered to be 'one of the standard sources of the conventional, Western conception of human rights' (Donnelly 1990: 33). For Locke, the individual, the ego, is the centre and origin of the moral world, and the most fundamental of all rights is therefore the right of self-preservation (Leo Strauss in Donnelly 1990: 36). 'Man' is autonomous and is the author of her/his own life project. The ego, in line with Protagoras' principle of *homo mensura*, has become the centre and origin of the moral world, especially the rights to self-preservation in terms of possessive individualism.

Immanuel Kant (1724-1804) provided another important principle that would later have an impact on 'rights-talk'. Kant viewed the inability

to use one's own reason without someone else's guidance as 'immaturity'. Kant considered the free use of reason to be the essence of Enlightenment. He described this free use of reason as autonomy. 'Autonomy' literally means, 'being a law to oneself'. According to Kant, this law is not outside us, is not transcendent, but is within us, as one's true being. The essential nature of the human will is the law of reason. What remained of religion was the ideal of a 'reasonable religion', as Kant called it in his book: *Religion within the Limits of Reason Alone* (1793). There was no place in his ideal of 'reasonable religion' for the existential elements of finitude and fear, or for the notion of grace. Like in Grotius' thought, religion was acceptable for Kant in so far as it was acceptable to reason. In the words of the Protestant theologian Paul Tillich, what was left after Kant was 'the reasonable religion of progress, belief in a transcendent God who existed alongside reality, and who does not do much in the world after he has created it' (Tillich 1968: 344). According to Tillich, in Kant's description of the Enlightenment, the Enlightened person is supposed to be a calculating and reasonable being, whose 'nature and reality as a whole appeared to be made up of the regular pattern on which he could rely and which make his business decisions possible' (Ibid. 341).

In public discourse it is often suggested that the principles of the UDHR are based on these Western philosophical traditions of Grotius's 'theological humanism', on Locke's 'possessive individualism' and Kant's 'autonomous rationalism'. Denying these cornerstones of the idea of human rights seems equal to denying the concept altogether. According to Ann Elisabeth Mayer, a scholar in the field of Islam and human rights, '[b]ecause of the linkage among individualism, humanism and rationalism, a rejection of these values is tantamount to rejecting the premises of modern human rights' (Mayer 1995: 38).

Despite the allegedly 'god-less' foundation of the idea of human rights, there seems to be room for religious ideas in Enlightenment reasoning. Grotius, for instance, spoke about 'humanistic theology' as a reaction to rigid ecclesiastical law. He opposed the legal authority of the church as an institution, but does not appear to have been against religiously inspired law per se. Even Locke's theorising is not as god-less as it seems at first. Human rights scholar David Little has asserted, for instance, that the Calvinistic roots of Locke's philosophical system can hardly be denied. 'Locke's ideas are, to be sure, the direct product of radical seventeenth-century Calvinism, especially as manifest in Holland and

England' (Little 1990: 76). The same may apply to Kant. According to the Dutch philosopher Ger Groot, Charles Taylor has shown in his *The Secular Age* that religion and reason do not necessarily contradict each other, even in Kant's *Religion within the Limits of Reason Alone*. There is a place for religion even within the limits of reason in Kant's theory (Ger Groot in Taylor 2010: 32).

The Judeo-Christian scriptures can be identified as a possible source of the UDHR. The Jewish scholar René Cassin (one of the composers of the United Nations document of 1948) concluded in his article 'From the Ten Commandments to the Rights of Man', while comparing the two documents, that 'the emblem of the Universal Declaration recalls the duty of human fraternity, inspired by the master precept "love thy neighbour as thyself". May it partake, despite its purely human origin, of the greatness of the Decalogue and appear as its worthy extension' (Cassin 2011).

It is possible therefore to derive the development of the human rights idea from religious sources. Jürgen Habermas divides the history of human rights into three phases: the theological phase, the metaphysical phase and the secular phase. From human rights that rested upon God's revelation, as was the case with Antigone and the American Declaration of Independence (theological), they developed into natural law founded upon – but independent of – God's revelation or will, as was the case with philosophers such as Grotius, Locke and Kant (metaphysical), to human rights deriving from the will and contract of the people, with no religious reference whatsoever, at present (secular). Habermas called this evolution from monotheism to a 'polytheism' of human rights the 'disenchantment of law' (*Entzauberung der Rechtswege*) (Van der Ven et al. 2004: 251-2). The development of the human rights idea into its secular version of the UDHR can probably best be understood in the light of the historical factors that played their part in shaping and realising it in the European context. After the religious wars in Europe and the atrocities of two world wars, respect for religiously neutral human rights came to the fore against the backdrop of these human rights disasters. In this regard, the beginning of the human rights project in the West may be described as having 'catastrophic origins' (Chanock 2000: 17). Especially in the aftermath of the atrocities of World War II, as a 'never again-mood' and optimistic 'rising expectations', gripped the Western world, temporarily forgotten Enlightenment principles were dusted off, and

given a new chance in Kant's terms of 'world peace'. The post-war emphasis on 'universal' human dignity in secular terms came at the expense of divinely authorised rights. The 'universal', and allegedly religiously neutral document was drafted in 'god-less' anthropocentric, 'Enlightened' principles. However, despite the fact that the UDHR took a critical stance towards religion in an early draft, Gerrie ter Haar has suggested that a different human rights model may be needed to do justice to human rights in the non-Western world.

[F]or the promotion of human rights worldwide, the question is how to combine a conflict-based human rights model – a *revolution* model – with a human rights model that, due to a different history, is based on cultural *evolution*, implying a consensus about human rights that is embedded in, and reflective of, a specific culture (...) In practice, the most important question is how religion, or the religious resources present in a given society, can be used for the protection of human rights and thus for the prevention of human rights violations. This is an important matter because so many people are religious practitioners. (Ter Haar 2011b: 307)

What are these possible religious sources that can be used for the prevention of human rights violations? The notion that human rights arose from 'secular' origins – in the narrow sense of neutral or even 'anti-religious' origins – can no longer simply be taken for granted, but must be subjected to scrutiny. This is especially the case in a globalising world where secularity, in the sense of a culture without room for god(s) or spirit worlds, is not the majority position.

In his book *If God were a Human Rights Activist*, social scientist and legal scholar Boaventura De Sousa Santos looks for 'a counterhegemonic conception and practice of human dignity and practices sustaining them' (Santos 2015: 7). According to him, 'If humanity is one alone, why are there so many different principles concerning human dignity and a just society, all of them presumably unique, yet often contradictory among themselves' (Ibid. 8). In his book he focuses on the challenges to human rights that arise when human rights are faced with political theologies³ that claim presence in the public sphere. Such movements 'constitute a grammar in defence of human dignity that rivals the one underlying human rights, and often contradicts it' (Ibid. 9). In Santos's view, such other grammars of human dignity, 'be they those underlying political theologies, or those embedded in the lifeworld of indigenous peoples and their ancestral, non-Western cosmovisions' (Ibid. 47), challenge the indi-

vidualistic, liberal and secular hegemonic human rights (cf. Howard-Hassmann 2013).

What role does religion have to play, in terms of the *contribution* it can make to historical and contemporary perspectives on human rights values? I will introduce Amartya Sen's social choice theory as a theoretical framework to discuss a possible contribution of religion to a human rights culture.

AMARTYA SEN'S 'SOCIAL CHOICE' AND HUMAN RIGHTS

Amartya Sen was born in 1933 in what is now the capital city of Bangladesh, Dhaka. In his formative years, Sen was inspired by the philosopher Tagore's approach to crosscultural communication as a counterweight to the cultural chauvinism that engulfed India through much of the 1940s soon after Tagore's death. People's identities as Indians, as Asians, or as members of the human race, seemed to give way to specific identifications with the Hindu, Muslim, or Sikh communities. The crisis that followed this 'massive identity shift' failed to take note of the diversity and 'inescapable plurality' that had made Indian culture so powerfully mixed, according to Sen. Looking back on his academic life on the occasion of receiving the Nobel Prize for Economics in 1998, Sen said that the areas that concerned him most were welfare economics, economic inequality, and poverty, especially after famines, on the one hand, and the scope and possibility of rational, tolerant, and democratic social choice including voting procedures, the protection of liberty and minority rights (Sen 1998: 3), on the other. During his career, Sen gradually moved from an academic, mathematical-economic approach, to the study of areas of economics that are more related to moral philosophy. For Sen, the word 'academic', means 'sound', rather than 'unpractical-theoretical'. 'My own interests gradually shifted from the pure theory of social choice to more "practical" problems' (Ibid. 6), for instance its relevance for the judgement of poverty, in investigating the principles and implications of liberty and rights.

Sen's social choice theory can be regarded as a reaction to John Rawls's theory of justice. Rawls's contractarian approach, which focuses on the issue of justice, has become dominant in contemporary political philosophy. Especially in his *A Theory of Justice* (1971), the contractarian mode of Rawls's thinking caused him to develop 'theories of justice that

focused on transcendental identification of the ideal institutions' (Sen 2009: 6). According to Sen, however, Rawls's 'transcendental institutionalism' approach has two features: (1) it concentrates on what it identifies as perfect justice. It tries to identify social characteristics that can be transcended in terms of justice, and (2) in search for this perfection, transcendental institutionalism concentrates primarily on getting the institutions right, rather than focusing on the actual social realisations. In line with, but critical of, Rawls's dominant contractarian approach to justice, Sen further developed the social choice theoretical framework of social justice that Kenneth Arrow had initiated in 1951. According to Sen, 'as an evaluative discipline, social choice theory is deeply concerned with the rational basis of social judgements and public decisions in choosing between social alternatives' (Ibid. 95). Whereas, according to Sen, Rawls's transcendental approach of 'taking an imagined jump to a perfectly just world' (Ibid. 96), cannot compare alternative proposals for a more just society, social choice theory engages people in discussions on justice and injustice in the world. Sen has contrasted Rawls's 'transcendental institutionalism' with the 'realization-focused comparison' approach to justice.

Sen has developed his ideas on 'incomplete', 'comparative' social justice on the basis of, and in reaction to, Rawls's 'totalist', 'transcendental' rational theory. Some Muslim and Christian authors have opted to apply to John Rawls's device of 'overlapping consensus' for purposes of public reasoning on human rights and religion. Mohammed Fadel and Abdulahi An-Na'im, for instance, have used the terminology of 'overlapping consensus' 'in the hope of mapping out a principled approach to resolving conflicts between contemporary human rights standards and accepted doctrines of Islamic Law' (Fadel 2012: 89). In multicultural societies 'overlapping consensus' can provide a standard for a crosscultural discourse on human rights' (Bielefeldt 2012: 114). However, Rawls's considerations regarding overlapping consensus are mainly political. Rawls neither refers to international issues, nor to questions of cultural or religious pluralism.

Sen's partial ordering and ranking of social justice issues, however, are less idealistic than the assumed 'overlapping consensus'. Instead of ideal consensus, Sen has emphasised an open impartial discourse on justice and human rights across the borders of closed communities. He has argued that, '[i]n the literature on the difficulties of cross-cultural commu-

nication, lack of agreement is sometimes confused with the absence of understanding. They are of course, quite different phenomena. A genuine disagreement presupposes an understanding of what is being disputed' (Sen 2009: 152). Social choice theory has, thus, a dialogical merit through its principle of open impartiality, and in my view, it offers a helpful framework for discussing interreligious dialogue on human rights.

Sen's Social Choice as a framework for reasoning about justice

Sen describes seven points of relevance of the social choice theory for the idea of justice:

- (1) As said before, the social choice theory of justice focuses on comparative assessments, not just on the transcendental, speculative, perfectly just society with just institutions that Rawls has proposed. 'This relational, rather than transcendental framework concentrates on the practical reason behind what is to be chosen and what decisions should be taken, rather than speculating on what a perfectly just society (on which there may or may not be any agreement) would look like' (Ibid. 106). The emphasis is on the choice between different assessments of justice in practice, rather than on a theoretical transcendental idea of perfect justice.
- (2) Social choice theory recognises the inescapable plurality of competing principles of social justice, which may conflict with each other. '[T]he need to take note of the possibility of durable conflicts of non-eliminable principles can be important in the theory of justice' (Ibid.). In a diverse world there must be room for competitive voices on what justice actually means. This diversity is a challenge rather than a threat. Sen illustrates the idea of plural and competing reasons for justice with the example of three children quarrelling about a flute. For different reasons, they each claim that it is just for them to own the flute: one child because it can actually play it, the other because it has nothing else to play with, and the third child because she/he made it. According to Sen, these reasons represent utilitarian, economic-egalitarian, and no-nonsense libertarian perspectives on justice, respectively (Ibid. 12-15). From an impartial perspective, these are all equally valid in terms of justice.

- (3) The theory of social choice allows for and facilitates re-examination, since 'the human mind cannot often enough grasp the immense reach of general principles' (Ibid. 107). Whereas the transcendental mainstream theories of justice are inflexible as they insist on highly demanding rules, realistic and comparative social choice theory gives proper due to the possibility that its idea of justice might need reassessment.
- (4) Social choice theory allows for the possibility of partial resolutions, while awaiting – or working towards – completion. 'The partial nature of the resolution is an integral part of the conclusions advanced by a theory of justice, even though that theory itself could remain open to further scrutiny and revision' (Ibid. 108). In case of practical barriers in applying justice, social choice allows for partial solutions instead of a complete theory of justice.
- (5) The formal structure of social choice theory is open to alternative interpretations and inputs. Sen borrows Adam Smith's device of the 'impartial spectators' in this context: the introduction into the discourse of distant voices to avoid the parochialism of local perspectives. 'In general, social choice as a discipline is concerned with arriving at overall judgements for social choice based on a diversity of perspectives and priorities' (Ibid. 109). I will elaborate on this concept of impartiality shortly.
- (6) Social choice theory emphasises precise articulation and reasoning. In the pursuit of justice in public reasoning, social choice theory can help to clarify what the debates are about by showing the lines along which normative debates may fruitfully proceed. 'Given the complex nature of human values and social reasoning, they may often be hard to capture in precise axiomatic terms, and yet the need for explicitness, to the extent that can be achieved, must have much dialogic merit' (Ibid. 110). The 'dialogic merit' of social choice theory can play an important role in the interactive processes of interaction on the meaning of justice in practical reasoning.
- (7) The role of public reasoning in social choice contributes to a public discussion on how problems can be addressed and which variations have to be contemplated and scrutinised. It has, for instance, led to discussions about 'the need for people to respect each other's rights over their own personal lives' (Ibid. 111). Instead of focusing on

universal norms, social choice through public reasoning cultivates tolerance of each other in our respective values.

In sum, we can say that comparativeness, competitiveness, pluralism, and openness to re-assessment are relevant to Sen's social choice theory. Its practical, realistic, and incomplete features are important as well. Moreover, the use of Smith's device of 'impartial spectators' of social choice can help to avoid limited local, 'parochial' views on issues of justice in a pluralistic and increasingly interconnected world. Social choice gives public reasoning its 'dialogic merit' by emphasising 'open impartiality'. These aspects of social choice theory all appear to be relevant in the context of my research. In comparing distinct Muslim and Christian perspectives on justice (1 and 2), social choice theory can aid scrutiny of social realisations on the ground (3). Rather than concentrating on ideal just institutions, social choice theory leaves scope for working on partial resolutions (4). In the concrete case of Eastleigh, instead of jumping to the perfect just world of possible 'arrangement-focused' relationships between the Government of Kenya and Eastleigh's residents, issues of justice (such as poverty alleviation, refugees' rights, access to clean drinking water, education, and basic medical assistance) are, in practice, addressed one by one, preferably by non-state actors alongside each other. Moreover, Sen's theory allows for 'impartial spectators' such as international human rights NGOs, (5) and thus avoids 'parochial', or limited local perspectives. Because it admits these impartial voices 'from far and near', or 'these eyes of the rest of mankind' into the public debate on Eastleigh, social choice theory has a 'dialogic merit' to give to the interactive process of practical reasoning (6), for instance, regarding respect for the rights of others (7).

Social Choice and Human Rights

Can social choice theory also accommodate a theory of human rights? Sen asserts that there is indeed the possibility of widening the informational basis of social choice theory to issues of human rights. He points at four specific features of social choice theory that make it possible to accommodate the idea of human rights.⁴

- (1) First, even though social choice theory is meant to propose a complete ordering of society, comparable to 'transcendental institutionalism', the formulation can be changed to allow for a partial ordering of social assessments in terms of human rights violations. Not

all human rights issues can be settled at once. This relaxation would be particularly important for welcoming 'some congruent, some divergent perspectives of the people of the world' (Sen 2009: 144-5) to open public reasoning on human rights principles.

- (2) Second, social choice is a function of each person's set of values, and does not focus narrowly on individual utilitarian interests, pleasures and desires. It is sensitive to individual concerns about issues that go beyond personal interests, such as the importance of the human rights of others. This interest is not dependent on institutions or on a national social contract, as Rawls would have it. In social choice theory, 'human rights can be seen as falling broadly on anyone who is in the position to help' (Ibid. 144). In social choice theory, therefore, human rights fall under the category of 'imperfect obligations', a category that I will explain shortly.
- (3) Third, reasoning about rights in social contexts is much enriched by public discussion and interchange of ideas, concerns and beliefs. The connections between individual values, public reasoning, and open discussion with others about human rights issues cannot but be central to the art of social choice. Human rights values are established or validated or recognised through discussion, which is at once social, intellectual, and creative. Unobstructed discussion about what human rights should be, is what social choice theory calls its 'dialogic merit'.
- (4) Fourth, even though the values to be considered in the narrowly defined format of social choice theory are those of the members of a nation state for whom decisions are made, there is no reason in a broadly defined social choice approach why other perspectives that come from outside the polity should not be introduced and considered. Adam Smith made systematic use of these broader perspectives through his device of the 'impartial spectator'. Smith's strategy of invoking impartial spectators creates scope for taking note of perspectives that are not strongly affected by the biases of one's own group. Given the powerful influence of one's situation and group affiliations that can be implicit and are not always clearly perceived, it is necessary to examine the perspectives of differently situated spectators – from far and near – to overcome parochialism.

The feature of social choice with regard to human rights, that was mentioned first, is its partial and thus ‘relaxed’ approach. Human rights issues cannot all be solved at once. In this way, social choice theory allows for ‘relaxed’ outcomes in partial orderings, as part of evaluative processes, even if other problems remain unsolved (Ibid.). Formally, what Sen expects to get from this permissive view of human rights are incomplete specified rankings – effectively partial orderings based on the intersection of different people’s not fully congruent rankings. Reasoned, partial agreements on human rights issues are sometimes better than ‘any presumption of unanimity, and we have reason to follow that route’ (Sen 2011: 14). Social choice is thus comparative in the sense that it explores ‘ways and means of basing comparative assessments of social alternatives on the values and priorities of the people involved’ (Sen 2009: 17). Rankings of alternatives can thus be realised on the basis of imperfect and partial *shared values*. For the idea of human rights, this implies and facilitates the possibility of dialogue about the plural groundings of the idea. In the next chapter, we will discuss this issue of grounding of human rights in different cultures and religions as part of Sen’s threefold critique on human rights.

In addition to being comparative, these partial resolutions can be useful – as they are ‘relaxed’ – for practical action on human rights issues. In Eastleigh, not all human rights issues can be solved by one agent only and at the same time. Some human rights NGOs in Eastleigh, for instance, concentrate their energy on human rights issues of children, others on labour rights and yet others on again other issues. Amnesty International, for instance, is not represented in Eastleigh. The organisation instead deals with the issue of forced eviction from the slums as an infringement of human rights treaties recognised by the Kenyan constitution (Amnesty International UK and the Alistair Berkley Charitable Trust, n.d., and Amnesty International 2013).

Sen describes human rights as ethical claims. He defines human rights to be ‘strong ethical pronouncements as to what *should* be done’ (Sen 2009: 357). According to the author, human rights are therefore ‘best seen as articulations of a commitment in social ethics’ (Sen 2011: 12). Human rights that represent values, more than interests, can thus be part of the ethical reasoning. Human rights have motivational connections to law, but are not legislation per se. ‘[I]t is important to give the general ethical status of human rights its due, rather than locking up the concept

of human rights prematurely within the narrow box of legislation' (Sen 2009: 366). Thus, according to Sen, human rights are moral assertions which are not necessarily dependent on legislation because of the importance of informed public discussion, advocacy, pressure ('naming and shaming'), social monitoring, and information by the media in general.

The ways and means of advancing the ethics of human rights need not to be confined only to making new laws (...) [F]or example, social monitoring and other activist support provided by such organizations as Human Rights Watch, Amnesty International, OXFAM, Médecins sans Frontiers, Save the Children, the Red Cross, or Action Aid (to consider many different types of NGOs) can help to advance the effective reach of acknowledged human rights. In many contexts, legislation may not, in fact, be involved at all. (Ibid. 365)

The United Nations and its associated institutions, other citizens' organisations and NGOs, as well as many of Eastleigh's individual activists, are working together to promote human rights values, without aiming to address, let alone change, legal structures *per se*. In the specific context of Eastleigh, the human rights (I)NGOs also seem to operate in this particular way in terms of activism by monitoring human rights violations. NGOs seem to contribute to a human rights culture by monitoring the cases of Eastleigh's residents, including practical action such as 'naming and shaming advocacy'.

One problem regarding the concept of human rights idea is the possibility of lack of agreement on what 'human rights' actually imply. Ever since the idea has come to the fore, its acceptability has been scrutinised at global, international and local levels. The question is how embarrassing this lack of unanimity actually is for understanding the debates on human rights. 'I would argue,' Sen claims, 'that it is not an embarrassment at all. A claim of a human right is only a claim, and unlike a legal right that is backed by a law that everyone within the system is meant to accept, there is no corresponding claim to monism in the human rights approach that I am trying to present' (Sen 2011: 14). Human rights as ethical values regarding justice and injustice are thus part of a participatory process by means of public reasoning and dialogue in which all are invited to engage. In these ways, Sen's social choice theory provides the necessary framework for me to relate human rights values to intercultural dialogue in the setting of Eastleigh.

Two terminologies of social choice theory regarding human rights must still be discussed in this section: ‘imperfect obligations’ and ‘open impartiality’. First, in Sen’s theory, human rights correlate with the duties of others. Anybody who is in a position to help another person has the duty to take action to realise another person’s freedom. The reason why we should help is related to the value of sympathy. ‘The reach and force of sympathy must be part of the conceptual underpinning of human rights’ (Sen 2009: 372). Sympathy in terms of human rights as social ethics belongs to a specific category of ‘imperfect obligations’. To illustrate this connotation of ‘imperfect obligation’, Sen describes a real-life case from New York in 1964 where a woman ‘was repeatedly and then fatally assaulted in full view of others watching the event from their apartments, but her cries were ignored by the observers’. According to Sen,

It is plausible to argue that three terrible things happened there, which are distinct but interrelated:

- (1) *the women’s freedom* not to be assaulted was violated (this is, of course, the primary issue here);
- (2) *the assaulter’s duty* not to attack and murder was violated (a breach of a ‘perfect obligation’); and
- (3) *the others’ duty* to provide reasonable help to a person facing assault and murder was violated (a transgression of an ‘imperfect’ obligation). (Ibid. 374–5)

The others, looking from their apartments, failed to provide reasonable help to the woman. The ‘third-party obligation’ that the others had, was ‘imperfect’ since it is not legally binding but, is based on a universal ethical demand. In the context of Eastleigh, where legal structures seem to fail to protect its residents, human rights in these terms of these imperfect, third-party obligations can possibly provide for an alternative.

Second, I come to the terminology of ‘open impartiality’. Sen (Ibid. 149–51) differentiates between so-called ‘closed’ and ‘open impartiality’. Closed impartiality is an assumption of Rawls’s theory of justice which Sen is critiquing because the impartial assessment is confined only to members of the focal group. According to Sen, this locally confined ethics, which he describes as ‘procedural parochialism’, is a serious difficulty, as it limits ‘our ability to go beyond our local world’. Sen prefers Adam Smith’s reasoning in this regard. In order to avoid ‘parochialism’, Adam Smith made systematic use of these broader non-parochial per-

spectives through his device of the 'impartial spectator'. It is necessary to examine the perspectives of differently situated spectators to overcome partiality in general. There is, however, no insistence here that outsiders, or imagined individuals from far as well as near, must be given the same role in the decision-making process as insiders. The concept of impartiality is nonetheless a helpful device to prevent local prejudices or parochialism. In line with Adam Smith, Sen opts not for Rawls's closed, but for open impartiality, crossing not only geographical borders, but also cultural boundaries. It is this decidedly 'open' outlook evoked by Smith's 'impartial spectator' which is possibly in need of reassertion. 'It can make a substantial difference in our understanding of the demands of impartiality in moral and political philosophy in the interconnected world we live in' (Ibid. 152). Sen recognises this 'open impartiality' as a prerequisite for a dialogue for global justice in institutions such as the UN, and in citizens' community organisations and NGOs, actually also in human rights campaigns. 'Human rights as an idea, is thus invoking an interactive process of critical scrutiny with open impartiality (including being open to information coming *inter alia* from societies and arguments coming from far as well as near), which allows disputations on the content and reach of putative human rights' (Ibid. 385). Hence the extremely important connection between human rights and public reasoning on the level of intercultural dialogue on rights as moral matters.

In sum, the key elements in Sen's theory of human rights are: (1) the definition of human rights as ethical claims or pronouncements and in terms of 'imperfect obligations' rather than human rights in strictly legal terms, (2) its partial, 'relaxed' approach to addressing different sorts of human rights violations, instead of jumping to an imaginary perfect society, (3) its 'dialogic merit', which invites a 'participatory process' by public reasoning about what human rights should be, (4) its openness to reasoning about rights in social contexts that enrich public discussion on human rights through the interchange of ideas, concerns, and beliefs, (5) its transgressing of national boundaries, inviting voices from outside as 'impartial spectators' in order to prevent parochial views on human rights, (6) its practical reasoning, giving human rights activism its proper due in terms of 'naming and shaming' in addition to theorising about human rights.

In the concluding chapter of the present study, I will use the theory of social choice regarding human rights in order to analyse human rights

culture and Muslim-Christian relations in the case study of Eastleigh. I will now use Sen's theory to identify the critical issues regarding human rights and will apply them in an interreligious setting.

SEN'S THREEFOLD CRITICISM OF HUMAN RIGHTS

In a chapter heading entitled 'Culture and Human Rights' (Ibid. 227-32), Sen formulates three major critiques of the enterprise of human rights: (1) the legitimacy critique, (2) the coherence critique, and (3) the cultural critique. He argues that these critiques reflect 'real scepticism in critically demanding circles' about the sources, coherence and even the entire conceptual structure that underlies 'the oratory on human rights'. Sen discusses these critiques by drawing out their strong and weak points. He sympathetically acknowledges the fact that human rights activists are often impatient with this kind of academic exercise, since those who invoke human rights want to change the world rather than interpret it, given the urgency of confronting human rights abuses around the world. 'Their proactive stance has had its reward...without having to wait for the theoretical air to clear' (Ibid. 356). Nevertheless, he thinks it is important to give the idea of human rights its theoretical basis. I will briefly describe the three critiques in this chapter as the underlying theoretical framework of the research, and subsequently put them in interreligious perspective.

No human rights without a foundation

According to Sen, the legitimacy critique of human rights refers to the opinion that there are no pre-legal rights. 'Human beings in nature are, in this view, no more born with human rights than they are born fully clothed; rights would have to be acquired through legislation, just as clothes are acquired through tailoring' (Sen 1999: 228). The utilitarian philosopher Jeremy Bentham therefore described natural rights as 'non-sense on stilts' and 'bawling upon paper' (in Sen 2009: 356). Bentham saw human rights as 'legal pretentions', and claimed that they should be considered 'a child of law' (Ibid. 361, cf. Sen 2004: 326-7). According to him, without the law, (natural) rights talk is just empty talk. I have already discussed how Sen has defined human rights as values in terms of a set of ethical claims or social ethics. He therefore disagrees with Bentham's criticism: human rights 'must not be identified with legislated legal rights. [...] We have to judge the plausibility of human rights as a sys-

tem of ethical reasoning and as the basis of political demands' (Sen 1999: 229, 230). In Bentham's analogy of human rights as a child of law, rights can indeed be 'the parents of law' as Bentham's opponent Herbert Hart maintained. In line with Hart, ideas such as human rights can and sometimes do precede their legal materialisation. Sen argues that,

The present inquiry on the foundations and cogency of human rights does not have any direct bearing on the obvious *legal* status of these 'human rights laws', once they have been properly legislated. As far as these laws are concerned, the relevance, if any, of this study would lie, rather, in the *motivation* that leads to the enacting of such laws, which builds on the pre-legislative standing of these claims. (Sen 2004: 319)

Sen then distinguishes between what he calls the 'recognition route' and the 'legislative route' (Ibid. 343). It is necessary to acknowledge the motivational impetus of the idea of human rights, even without legislation or institutional enforcement of fundamental human rights. As we discussed, Sen defines human rights as strong ethical pronouncements of what *should* be done. As such human rights do not 'exist' as law in a statute book, but they are in fact proclamations of an appeal to the idea 'that every person anywhere in the world, irrespective of citizenship, residence, race, class, caste or community, has some basic rights which others should respect' (Sen 2009: 355). He accepts that there is a 'softness' or even 'mushiness' about the conceptual grounding of human rights. In his view, human rights can be a very attractive belief, and politically effective rhetoric, before being a legal instrument. The moral claims of human rights can actually motivate social action and human rights activism before being entrenched in legal documents.

Mohamed Salih and Bas de Gaay Fortman discuss Sen's threefold criticism in a joint article (Salih & De Gaay Fortman 2009: 21-35). They place Sen's *legitimacy critique*, which they prefer to call the 'legality critique', in a religious context. They agree with Sen that the idea of human rights needs to have a convincing source, other than enactment in positive law alone. 'Clearly, in this respect, religions or other types of encompassing world views must help to substantiate the "confession" that human beings are born equal in rights' (Ibid. 26). In line with Sen's inquiry into the foundations and coherence of human rights, the authors agree that human rights need a 'confessional' grounding that should be based on a convincing – in Sen's terminology 'motivational' – source that world views can provide.

This legitimacy critique is often called the issue of ‘foundationalism’ in the discourse on the relationship between human rights and religion. Do Christianity and Islam have something to offer in terms of giving the idea of human rights a ‘confessional’, spiritual, or motivational basis? Does the contemporary global and religiously plural world call for what De Gaay Fortman calls a ‘strategic sophistication...not least in the intricate domain of religion, culture and human rights’? (De Gaay Fortman, 2007: 10). Or does religion represent a ‘conversation stopper’ (Ignatieff 2001: 54) and ‘a danger to, rather than a foundation’ (Henkin 1999: 34) for human rights, as we mentioned in the previous chapter? Before addressing this foundational issue from a religious angle in the next chapter, I will first turn to two of the other critiques of human rights that Sen has formulated.

No human rights without institutional duties

Sen has described the second critique of human rights as the *coherence* critique. This critique tries to find an answer to the question, ‘whether we can coherently talk about rights without specifying whose duty it is to guarantee the fulfilment of the rights’ (Sen 1999: 230). According to Sen, this mainstream critical approach asserts that rights can only be formulated sensibly if they are accompanied by a description of the duties of the agents who are responsible. ‘It may be all very nice, so the argument runs, to say that every human being has a right to food or to medicine, but as long as no agency-specific duties have been characterized, these rights cannot really “mean” very much’ (Ibid. 228). Although they are ‘heart-warming sentiments’, human rights without duties are, strictly spoken, incoherent. Sen agrees with the claim of these critics, that in some legal contexts, rights without duties are empty. ‘They may have some merit, but in normative discussions rights are often championed as entitlements or powers of immunity that it would be good for people to have. Human rights are seen as rights shared by all – irrespective of citizenship – the benefits of which everyone *should* have’ (Ibid. 230). Sen thus distinguishes between a right a person actually has, but which has perhaps not been fulfilled, and a right that the person does not have but ought to have (cf. Sen 2004: 328).

Sen’s theoretical approach of what duties, obligations or responsibilities imply is helpful here. A complex pattern of correspondence of rights and duties is brought into a structured ethical system in what Sen calls

the evaluative framework of human rights (Sen 2009: 375). In order to understand what Sen means here, we need to explain the philosophical issue of distinct and sometimes overlapping types of obligations. Borrowing from the work of Immanuel Kant, he distinguishes between so-called 'perfect obligations' and 'imperfect obligations'. Sen (Ibid.) illustrates the difference with the example described above of the woman who was fatally assaulted in New York, while people were watching from behind the windows and balconies of their apartments, ignoring the woman's cries for help. The observers' duty, or *imperfect obligation*, to provide reasonable help facing the assault and murder was violated. Sen calls providing this assistance to the woman 'reasonable help to third parties' (Ibid.). According to him, it is difficult to avoid this 'imperfect', third-party obligation of others in a framework of human rights as ethics (and motivating legislation). As 'imperfect' global obligations, Sen mentions social and economic rights, such as the right to education, protection against poverty, an adequate level of agency, and basic moral rights such as the freedom of expression, for everyone in the world, regardless of nationality (Ibid. 381). Social, economic, and cultural rights – or the 'second generation' of human rights – integrate these ethical issues into a human rights framework. They are a radical departure from the confined limits of 'first generation' of liberal political and civil rights.

According to Sen, the wider second generation of rights and their corresponding 'imperfect' obligations constitute the area where ethical reasoning and open dialogue are needed most. 'The second-generation rights have become a significant influence on the agenda of institutional reforms for the fulfilment of "imperfect" global obligations, which have been sometimes explicitly but often more implicitly acknowledged' (Ibid.). In this wider class of 'imperfect' obligations, advocates and human rights activists press for a more serious debate and interactive processes. 'The advocates of particular human rights can be involved in active work to get their basic ideas accepted as widely as possible' (Ibid. 385).

A particularly interesting point from the perspective of the present study about diapraxis is Sen's plea for the acknowledgment of human rights as an ethical *practive* in terms of imperfect obligations, as part and parcel of the theoretical framework of human rights. In an article on the elements of a theory of human rights, he concludes that:

[I]t is also important to note that the conceptual understanding of human rights...can benefit substantially from considering the reasoning that moves the activists and the range and effectiveness of practical actions they undertake, including recognition, monitoring and agitation, in addition to legislation. ... [T]he richness of practice, I have argued, is also critically relevant for understanding the concept and reach of human rights. There is, I must conclude, no great deficit in the balance of trade between theory and practice. (Sen 2004: 356)

In Sen's framework, human rights activism in terms of practical actions (via recognition, monitoring and agitation) must thus be part of the (legal) theorising about human rights. As I will show later in this study, individual human rights activists are fulfilling their 'imperfect obligations' regarding Eastleigh's residents in a moral, rather than in a legal framework. The workers of (I)NGOs or local CBOs monitor the rights of Eastleigh's residents, not as part of the workers' legal duty, but because of a drive to provide moral assistance to the residents. The 'sympathy', or what Sen prefers to call 'commitment' (Sen 1999: 270), of these civil society agents is 'imperfect', since it cannot be enforced by law. The 'commitment-based action' thus fills a niche that the official authorities are seemingly failing to consider as their legal obligation. Because of the asymmetry of power, human rights agents provide for the unilateral obligation or responsibility to vindicate the rights of others. Their moral action-oriented commitment is to improve the access to rights for all. 'The 'imperfect obligations' associated with the recognition of human rights can be seen as falling broadly on anyone who is in a position to help' (Sen 2009: 144). Without regard for a person's citizenship, religion or class, people who are in the position to help, sometimes even against their own interests, are committed to assist those less fortunate as members not of a particular nation, but based on the impartial rights of a shared humanity.

Salih and De Gaay Fortman have summarised Sen's *coherence* critique as 'rights without remedies', and therefore as unconnected to normal 'legal' rights. They refer to Sen's answer to the coherence critique in terms of action-oriented commitment and argue that this commitment requires a religiously inspired motivation.

The present counter to this is that the realization of rights is never automatic: rights are always action-oriented. Although human rights should trump other rights in view of their transcendental nature, they tend to be

even more action-oriented. Particularly in societies where the local, legal, and political processes have yet to embed internationally recognized human rights, the recognition of human rights become a struggle that requires inspiration and motivation. Again, here, now the role of religion seems crucial. (Salih and De Gaay Fortman 2009: 26)

In the same vein, and in a context where world views are relevant, Ter Haar differentiates between *moral-legal* and *moral-spiritual* approaches to human rights. Whereas *moral-legal structures* are important for the overall protection of human rights, 'in countries marked by a religious outlook on the world these must be matched by a *moral-spiritual* approach to the subject. The latter might lead to greater attention for a proper balance of rights and responsibilities in the human rights debate, which is often a matter of concern to religious people' (Ter Haar 2011b: 305).

In the context of Eastleigh, the rights of the Somali community seem not to be respected since the Government of Kenya considers many residents of Somali descent as non-Kenyans. The authorities face specific challenges in addressing their obligations to the plight of Somali refugees. Theoretical legal rights in a constitutional framework based on human rights, therefore, need correlative practical obligations as performed by relevant duty-bound institutions. In a situation where such a duty-bound 'system world' (Habermas 1987: 124) of 'transcendental institutionalism' (Rawls, from Sen 2009: 5) is missing, the 'open impartiality' of international and national human rights bodies claim rights on behalf of these urban refugees in their 'life world' where legal remedies seem absent (Habermas 1987: 124).

The potentially positive role that religion can play by the 'confessional' recognition of human rights, by critically monitoring the observance of human rights, and through blame-and-shame agitation, possibly motivates legal standards. Can such a positive religious role be part of the agenda in Christian–Muslim human rights practice? Or are there religious hindrances with regard to human rights culture that are obstructing such a dialogue-through-practice, or *diap Praxis*?

Human rights and cultural values

The third issue of human rights that Sen discusses is a *cultural* critique regarding of their putative universality. This critique is less concerned with issues of moral-legal foundations or duty-bound institutions. In this

critique, the moral authority of human rights is seen as conditional on particular cultural values. 'Human rights, to justify the name, demand universality, but there are no such universal values, the critics claim' (Sen 1999: 228). Sen strongly objects to claims of what he considers closed particularistic, 'partisan', even 'parochial' cultural boundaries in respect of the universal values that human rights are supposed to embody. He denies such 'uncrossable barriers' exist between the values of different cultures, now and in the past. He refuses the claim of the uniqueness, or even superiority, of mutually exclusive 'Western values' over and against 'Asian values', which he refers to as religious or cultural separatism. Values such as individualism, in the sense of individual rights and liberties, are not the prerogative of Western societies, he argues. Similarly, ideas of justice, rights, reason and 'love of humanity' are not 'predominantly, perhaps even uniquely, Western values' (Sen 2004: 351). Sen denies in particular that the value of individual rights and liberties is a 'significant classificatory device separating the 'West' from the 'East'.

Indeed, the advocacy of that line of classification has come from both the jealous guardian of the uniqueness of 'Western culture' and from resonant Eastern champions of what are called 'Asian values', allegedly giving priority to discipline over liberty. There is, however, very little empirical basis for dividing the history of ideas in this way. (Sen 2009: 228)

In line with Adam Smith's criticism of 'local parochialism of values' (Ibid. 45), Sen seems eager to prove that there are ancient Asian equivalents of the values of justice,⁵ democracy, tolerance and diversity, public reasoning, and human rights. Sen describes, for instance, the Moghul Emperor Akbar (1556-1605) as a powerful practitioner of Islamic tolerance and religious and cultural diversity in India.

[W]e are not dealing with a democrat, but with a powerful king who emphasized the acceptability of diverse forms of social and religious behaviour, and who accepted human rights of various kinds, including freedom of worship and religious practice, that would not have been so easily tolerated in parts of Europe in Akbar's time. (Sen 1999: 238)

This does not mean, however, that he is leaning to the other extreme, championing only Asian values, be it Hindu, Buddhist, Confucian or Islamic. Following Tagore, Sen maintains that the recognition of diversity within different cultures is extremely important in the contemporary interconnected global world. 'Our understanding of the presence of diver-

sity tends to be somewhat undermined by constant bombardment of simple generalizations about "Western civilization", "Asian values", "African cultures" and so on' (Ibid. 247). He relates the universality of human rights to the idea of unobstructed discussion through open participation by persons across national boundaries. Partisanship should be avoided through an *interactive* process, in particular by examining what will survive public discussion. 'Adam Smith's insistence that ethical scrutiny requires examining moral beliefs from, *inter alia*, "a certain distance" has a direct bearing on the connection of human rights to global public reasoning' (Sen 2004: 320). At present, scrutiny from a distance as an 'impartial spectator' may have something to contribute to the assessment of human rights abuses. Smith insists that 'the eyes of the rest of mankind' must be invoked to understand whether a punishment appears equitable. Ultimately, the discipline of critical moral scrutiny requires, among other things, endeavouring to view our sentiments and beliefs through the eyes of other people, or as other people are likely to view them. 'The need for interactions across the borders can be as important in rich societies as they are in poorer ones' (Ibid. 355).

Salih and De Gaay Fortman have also commented on Sen's *cultural* critique by which Sen refers to cultural *relativism*: are the ethics underlying human rights truly universal? In the light of Sen's thought, they clearly believe that universality is not only juridical universality. 'The issue is how each specific culture might provide the spiritual conviction that the global human rights project requires. Thus, the challenge becomes to diversify universal human rights in ventures connected with specific cultural contexts' (Salih & De Gaay Fortman 2009: 26). Elsewhere, De Gaay Fortman has defined human rights as a twofold movement: 'downstream' and 'upstream'. As a downstream effort, human rights represent 'standards set internationally downward towards people's daily lives' (De Gaay Fortman 2004: 69). Upstream human rights, he describes, as the whole course of action that begins with people in the process of self-identification as holders of rights. 'The challenge they are facing in their daily lives is to find protection against abuse of power, and to acquire the basic freedoms and basic entitlements that follow from respect for everyone's basic human dignity' (Ibid. 71). '[I]njecting religion with the notion of human responsibility for the dignity of life will have to occur at the grass roots level' (Salih & De Gaay Fortman 2009: 35). Downstream and upstream processes may present many obstacles, but they also pro-

vide many opportunities. One example of such opportunities is the Arab Charter on Human Rights that came into force on 15 March 2008 upon ratification by seven Arab states. The Arab Charter on Human Rights is only one of many alternatives of looking at human rights culture.

In the same vein, Makau Mutua, Kwasi Wiredu, Francis Deng, Abamfo Atiemo and Bonny Ibhawoh have identified *and* criticised the idea of human rights in African contexts in their studies of how African cultures have used the understanding of the human rights idea. Yet, as shown at the beginning of this chapter, African indigenous approaches contain concepts equivalent to the principles of human dignity and rights (cf. An-Na'im and Deng 1990: 243-328). In the next chapter I will turn to Muslim and Christian critiques of human rights.

CONCLUSION

In this chapter, I have described Amartya Sen's social choice theory as an elaboration of John Rawls's social contract theory of 'transcendent institutionalism'. As the 'reasoned construction of social order', social choice theory focuses on social realisations rather than presuming utopian institutions and the ideal behaviour of its citizens. Social choice theory is more 'relaxed' since it allows partial solutions to issues of human rights. Its approach to human rights highlights public reasoning and cross-cultural dialogue, transgressing national borders, rather than human rights within the 'closed' nation state that Rawls proposes. Sen uses Adam Smith's 'open impartiality' of 'impartial spectators' as a device to deliver human rights in the globally interconnected world that we inhabit. Sen's use of Immanuel Kant's distinction between 'perfect obligations' and 'imperfect obligations' of third parties can help to understand human rights as ethical values and duties rather than laws.

In the light of his social choice theory, Sen has discussed a threefold critique of human rights based on legitimacy, coherence and culture. These critiques deal with the issues of human rights 'foundationalism', human rights *and* responsibilities, and human rights universalism versus cultural relativism, respectively. With Salih's and De Gaay Fortman's help, I have linked Sen's threefold critique to a more religious and practical context of human rights culture in the sense of the 'confession', 'action-oriented motivation' and 'spiritual conviction' that religions can provide.

In Chapters 4, 5 and 6, we will see whether and how human rights agents – both individual activists and human rights NGOs, CBOs and FBOs – represent the 'impartial spectators' who regard it as their 'imperfect obligation' to help the residents of the Eastleigh estate. In 'Little Mogadishu', Somali refugees and business people, depend on the 'open impartiality' of these non-governmental organisations. Can the 'imperfect obligation' of religiously inspired rights activists provide for a paradigm shift in Muslim-Christian interaction in Eastleigh?

Before I turn to the context of Eastleigh, I will discuss Sen's critiques of human rights in the following chapter, in the light of general Christian and Muslim scholarly thought regarding the relationship between human rights and religion.

NOTES

¹ I will make use the Social Choice Theoretical Framework in this study, as described and developed by Sen (2001, 2009) and 'Social Choice and the Idea of Justice', Toulouse, 16 June 2011, Toulouse-justice-2011,fr/SCT-JUS.TOU-1.pdf. (accessed 20-8-2012).

² Cf. Sen's juxtaposition of Krishna's deontology and Arjuna's consequentialism regarding divine decree and human responsibilities (2009: 210-14).

³ Santos (2015: 14) designates political theology as 'the different modes of conceiving the intervention of religion, as divine message, in the social and political organization of society'.

⁴ 'Social Choice and the Idea of Justice' Toulouse, 16 June 2011, Toulouse-justice-2011,fr/SCT-JUS.TOU-1.pdf., pp. 15-17 (accessed 20-8-2012).

⁵ See for instance his classical distinction in Indian jurisprudence in the Sanskrit language of *niti* and *nyaya* (Sen 2009: 20-21).

3

Christian and Muslim Voices on Human Rights

INTRODUCTION

In this chapter, I will discuss Muslim and Christian scholarly approaches to human rights. In the previous chapter I introduced social choice theory as the theoretical framework of this study. Sen has taken a neutral position with regard to religion, while still drawing examples and narratives from distinct religious sources, as I described earlier. But he has not dealt explicitly with the possible interrelationship between religion and human rights. In the present chapter, I will use Sen's framework in an attempt to conceive human rights culture from an interreligious perspective. Is there a common ground of shared human rights values upon which religions can build bridges between themselves for the benefit of the common good?

Using Sen's definition of human rights and his threefold criticism of human rights described in Chapter 2, I will address the issue of how Christian and Muslim scholars scrutinised the idea of human rights: its foundation, its correlation with duties, and universalist or culturally relativist views of its relevance. After describing a number of selected Muslim and Christian scholarly voices, I will explore possible windows of opportunity for interreligious interaction – diapraxis – between the two world religions on a more theoretical plane, and thus try to find an answer to the first sub-question of this study: How can we analyse, interpret and explain human rights in the broader framework of Christian–Muslim relations?

GROUNDING OF HUMAN RIGHTS IN CHRISTIAN AND MUSLIM THOUGHT

Christians and church-related organisations are relative newcomers to human rights discourse. It would be unrealistic therefore to claim that human rights are actually a Christian invention (cf. Hannah Arendt in

Van der Ven et al. 2004: 480). In his book *Reframing the Intercultural Dialogue on Human Rights, A Philosophical Approach* (2014), the philosopher Jeffrey Flynn discusses different ‘compatibility debates’ in which he confronts Christianity, Islam and Asian values with the concept of human rights. He has aptly contended with regard to the compatibility of Christianity and human rights that,

Human rights are often criticized for their Western origins, but they are by no means a straightforward outgrowth of a Christian idea of human dignity. In fact, a number of philosophers have suggested that the relation between Christianity and human rights can serve as a good starting point for intercultural dialogue not because of their long-standing compatibility, but instead because their long history of *conflict* and only relatively recent reconciliation is instructive. (Flynn 2014: 17)

The conflict can be illustrated by a series of papal documents issued in the wake of the French Revolution, beginning with a letter by Pope Pius VI in 1791, *Quod aliquantum*, which calls religious liberty a ‘monstrous right’, and including also Pope Pius IX’s *Syllabus Errorum* of 1864, which condemns religious liberty and freedom of the press as being among the gravest errors of modern liberalism (Ibid. 18). Not only church institutions, such as the Vatican and the World Council of Churches, but individual contemporary Christian human rights thinkers too have clearly been divided about whether human rights exist, and if so, what their nature and foundation could be. The Second World War caused a clear watershed in Christian approaches to human rights. Whereas before 1945, Christian theologians’ criticism of the idea of human rights was often fierce, after the War for practical and moral reasons this criticism gradually waned. Before 1940, Christian scholarly criticism was directed particularly at the problem of how human rights are grounded. The Protestant theologian Friedrich Gogarten (1887-1967), for instance, in his *Politische Ethik* (1932), wrote extensively on human rights (Schenderling 2010: 5-18). His critique of human rights primarily concerned their foundation. According to Gogarten, human rights (1) are too optimistic, being predicated as they are upon *an-und-für-sich-gut des Menschen*: the idea that the human being is at his/her core morally good, (denying the theological connotations of the ‘fall’ and ‘grace’), (2) reflect a tradition in which the rights and autonomy of the individual are given a central position (denying human dependency on a divine creator), and,

(3) place the sovereignty of the individual over that of the state (diminishing the strong arm of the authorities).

After the atrocities of the Second World War, the world community became convinced, however, contrary to Gogarten's ideas, which reflect the context of the Weimar Republic during the crisis of the 1930s, that individuals had to be protected from state totalitarianism. Peaceful coexistence in a religious and cultural pluralistic world was only possible on the basis of a common ethical standard, which at the time only international humanitarian law could allegedly provide. Post-war theology placed greater emphasis on the pragmatic interpretation of human rights. With the Second Vatican Council (1962-65), Pope John XXIII's *Pacem in terris* (1963) and the Council's *Dignitatis humanae* (1965), human rights became part of Catholic social ethics. In the 'Compendium of the Social Doctrine of the Church' (2004) human rights were incorporated into Catholic social doctrine, as it stressed that the human person is created in the image of God. The text maintains the value of human rights in pointing out that 'the Church sees in [human] rights the extraordinary opportunity that our modern times offer, through the affirmation of these rights, for more effectively recognizing human dignity and universally promoting it as a characteristic inscribed by God the Creator in his creature' (Pontifical Council for Justice and Peace 2004: 66). In order for Christians to be convincing, they had to be able to view rights as a modern form of expressing the Christian message by protecting the unconditional dignity of every human being. This process of reconciling Christianity and human rights is still ongoing. The theologian Walter Kreck, for instance, states that, '*Mit Menschen, die nicht an Jesus Christus glauben, sollen wir Christen gemeinsam für solche Menschenrechte eintreten – und zwar gerade aus unsrer Bindung an Christus heraus*' ('We Christians should stand up for human rights together with people who do not believe in Jesus Christ, and this precisely on the basis of our connection with Christ.' My translation of Walter Kreck in Schenderling 2010: 12).

Although the practical value of human rights seems to have been acknowledged by a number of Christian human rights scholars, the issue of the right foundation of the concept did not go away. This was already apparent at the start of the activities of the UNESCO commission headed by Eleanor Roosevelt, which prepared the text of the UDHR between 1945 and 1948. The Brazilian and Dutch delegates, among others, attempted to amend the UDHR preamble with a reference to 'man's di-

vine origin and his eternal destiny'. These delegates regretted that the origin of human rights – 'the Supreme being' was not mentioned (Van der Ven 2010: 164). Other scholars suggested that the statement of human dignity should be strengthened by including a reference to the fact that every person has been 'created in the image of God', while referring to Genesis 1 verse 27. The attempt was to no avail either. Religious questions such as how human beings relate to their Creator and their fellow human beings, and what the relationship is between individuals' rights and their God-given duties and responsibilities vis-à-vis the community upon which they depend, seemed no longer to matter. The UDHR had progressively focused on the rights of individual human persons rather than on the rights of God, whose name it never mentions. The 'god-less' Universal Declaration of 1948 consequently remained silent about theological questions. The composers of the UDHR had explicitly and consciously excluded specific religions and worldviews in the drafting process, given the plurality of religious convictions among the then member states of the United Nations. According to them, if the secular legal standard of the UDHR was to be universal, it must try to stay neutral in terms of religion. Individual contemporary scholars, however, have never completely ceased to reiterate the issue of grounding the whole idea of human rights. Whereas Christian thought such as Catholic social ethics appears to have stopped criticising the idea of human rights and has gradually 'assimilated' it, some individual scholars want to reopen the debate on the philosophical and theological underpinnings of human rights. What are the contributions that contemporary scholars are making?

Human rights foundationalism in contemporary Christian thought

Roger Ruston and Jürgen Moltmann: 'Imago Dei', the common good, and natural law

Roger Ruston, an ethical scholar and moral theologian, has praised the Catholic Church's attitude to human rights over the last century in his *Human Rights and the Image of God* (2004). Ruston has been a member of the Dominicans' Commission for International Justice and Peace. Coming from what he calls the natural law and natural rights tradition, he has developed a theology that provides a foundation for human rights. Ruston claims that questions of *human* rights can only be fully understood as originating from within 'a theological thought-world provided

by belief about creation and the familial relationship of human beings as creatures of God' (Ruston 2007: 31). Within the context of the common possession or common denominator of the *imago Dei*, the image of God (Genesis 1: 26-28), Ruston evaluates the familial relationship in the 'planetary co-existence' of Christians together with all other human beings. He has situated the theological foundation of the *imago Dei* in nature, thus critiquing Christian behaviour.

The doctrine of God's image born [*sic*] by every human being has been and remains in some aspects counter-cultural. The fact that Christians themselves have had enormous trouble in putting their own doctrine of basic equality into practice is evidence for this rather than an argument against it...The idea of nature has been a two-edged sword, in that the 'natural order' of things has been used to justify oppressive dualities (male-female; highborn-lowborn; pale-dark; rational-irrational) as well as to unite us in a common humanity. (Ibid. 32)

Ruston equates 'basic equality' with the more abstract modern notion of human dignity, as a principle of equal concern and respect, with roots in the monotheistic religions of Judaism, Christianity and Islam. Ruston's foundation of human dignity in creation and his concept of the *imago Dei* – which is comparable to notions such as 'human sacredness' (Perry 1998: 37) – can inspire a more religiously motivated grounding of human rights culture.

Jürgen Moltmann, a prominent Protestant scholar in the field of human rights, has also emphasised the aspects of creation and natural law. According to him, the Christian tradition provides three overlapping subjects that can provide a justification of human rights: (1) creation and natural law; (2) the nature of the Decalogue, and (3) the biblical themes of liberation, slavery, and God's claim on humanity. Moltmann has based his argument on the three biblical themes which he describes as (a) liberation from slavery by God, (b) a covenantal relationship, by being created in God's image, which involves both rights and duties, and (c) hope in the coming reign of God, through which God claims humanity in order to allow it to realise its original reality. In line with Ruston, Moltmann's 'theology of Hope' grounds human rights in the *imago Dei*: 'Human rights to life, freedom, community, and self-determination mirror God's claim upon persons, because in their relationships in life – human beings with each other and creatures with creation – they are destined to reflect the image of God' (Markham 2003: 68). For Moltmann, the human likeness

of God is inextricably linked to human dignity, the foundation of human rights.

In an extensive historical overview, Van der Ven has described the concept of human dignity as a metaphor of the image of God. He has shown how the two concepts of human dignity and of the image of God complement and galvanise each other (Van der Ven et al. 2004: 301). Apart from expressing the autonomous human being's ontological status, the metaphor focuses 'on the practice of connective justice in everyday life with a preferential option for the destitute' (Ibid. 302).

On the one hand people's dignity is the very essence of their humanness; on the other, treat both the other person and yourself on the basis of this dignity and with due regard to that dignity. In other words, human dignity implies not only an ontological description ('the human being is an end in itself'), but also – that is what 'image of God' teaches us – a moral precept ('be a human being to the other who is in need'). (Ibid.)

Human dignity, as it is understood from a Christian perspective, implies 'a moral precept' in concrete experiences of violations of human dignity here and now. The concept stimulates and motivates people to change themselves as well as those around them, especially those in need. Van der Ven concludes that according to the exegesis of the image of God metaphor in Genesis, that human dignity is, for instance, not intrinsic, 'but is based on justice and charity shown to *personae miserae*'. Respect for their dignity shows concern for the dignity of 'the least of my brethren', and in that concern God manifests himself, he who heard the cry of his people and reveals himself in the comfort extended to them (Mt 25: 31-46)' (Van der Ven 2010: 178). This 'commitment' (Sen) or sympathy that connects people with God vertically, and with their fellow human beings horizontally, is a moral injunction or imperfect obligation (Sen) to take care of 'the poor, especially widows, orphans, aliens, the desperate' (Van der Ven et al. 2004: 301).

Max Stackhouse: Public Theology

Max Stackhouse is a scholar of Christian ethics and is the author and editor of many books on human rights. He describes the present status of human rights as follows: 'We can be optimistic, as the human rights idea has at least become a part of the *ius gentium*, the cross-culturally operating consensus as to what constitutes proper behaviour by states and other formal institutions, and what counts as compelling moral arguments in

contemporary ethical discourse' (Max Stackhouse in Schenderling 2010: 6). Not unlike Sen, Stackhouse has framed human rights from an ethical, cross-cultural, dialogic perspective. Despite his optimism about human rights as the cross-culturally operating consensus, Stackhouse has criticised the way today's secular validation of human rights is grounded. He has argued that only a religious morality as expressed in a new public theology can realise its universalistic intent. Public theology responds to the problem that human experiences do not interpret themselves but require various modes of public discourse to discern their meanings. Hence the 'dialogic merit' (Sen) of human rights. The 'public' they address are religious, political, legal, economic, and academic 'publics'. 'All these "publics", which together constitute much of civil society, are decisive for human rights, and are shaped by theological influences' (Stackhouse 1999: 20). In offering the public theological approach, Stackhouse offers a counterbalance to the 'often intellectually thin' grounding of human rights in the Enlightenment as 'a new secular faith'. First of all, Stackhouse asserts that there is '[g]rowing evidence that the Enlightenment is more deeply rooted in theological presuppositions than it acknowledges' (Ibid. 23). As has been seen in the previous chapter, philosophers such as Grotius, Locke, and Kant all thought within a religious framework.

Thus, Stackhouse has asserted, ' "the logos" of "theos" may well be the most rational ground for holding human rights in the first place' (Ibid. 16). The ultimate basis of 'the right to have rights' is a divinely endowed core of each person. 'We all stand under a universal moral law that human nature cannot fully comprehend. Theological notions such as "soul", "spark of the divine", "image of God", and "inalienable rights as endowed by the Creator", are more comprehensive than the idea of human rights itself, and certainly more than any code, covenant, or declaration about them' (Ibid.). In this way, and through a public theological discourse, in which a plurality of cultures and religions can participate, an enduring theory of human rights can be developed. In conclusion, Stackhouse has summarised how public theology can help to discern public and universal truths in the realm of human rights. According to him, these universal truths tell us:

- (1) that each person has a dignity conferred by God, (2) that all live under divine, universal moral law, (3) that no state, even an international federation of states, is competent to control all matters since some aspects of

human activity are sacred and beyond political agreement or social expediency, and that therefore a social pluralism is required, (4) that persons have to come to non-coerced conviction about matters at this level, so that freedom of religion is demanded, and (5) that there are valid continuities between the great and classical understandings of sacred history and the present, and the present understandings and those emerging from new encounters with the great religions and philosophies. All these are theological points that sooner or later are best acknowledged as such, and as the ground for human rights. (Ibid. 26-7)

Whereas grounding human rights in these universal points is self-evident for Stackhouse, non-religious scholars such as Ignatieff and Henkin claim that '[h]uman rights are not, and cannot be, grounded in religious conviction' (Louis Henkin in Amesbury & Newlands 2008: 60). Contemporary Catholic and Protestant human rights scholars such as Ruston, Moltmann and Stackhouse, however, are painstakingly searching for religiously defined foundations of human rights. Whether on the basis of a theology of creation, of human nature in terms of *imago Dei* and the 'common good' and 'natural law' (Ruston and Moltmann), or of 'public theology' (Stackhouse), these thinkers have attempted to involve Christian ideas in the grounding of the human rights project. In order to make comparisons possible from an interreligious perspective, I must now inquire what possible trends and issues can be discerned regarding human rights foundationalism in Islamic thought.

Human rights foundationalism in contemporary Muslim thought

It will not do to make any generalising statements about the compatibility of Islam and human rights. Ann Elisabeth Mayer, a scholar of comparative and Islamic legal studies, demonstrates that, 'Muslim views on the relationship of Islam and human rights are so complex that it is extremely difficult to make valid generalizations about the subject' (Mayer in An-Na'im & Deng 1990: 133). Al-Bāqir al-Afif, a Sudanese professor of religious science at the University of Manchester and head of the Cairo-based Centre for Human Rights, distinguishes nine possible Islamic approaches to human rights (Al-Baqir al-Afif in Johnston 2007: 154).¹ Yet despite the diversity, public discourse on the idea of human rights have become a common point of reference in the Muslim world. From the 1970s onwards, a plethora of Muslim voices on human rights have shown either staunch resistance, or showing openness to inter-civiliza-

tional discourse, and many positions in between. Alternative Muslim human rights declarations have been developed, such as the Universal Islamic Declaration of Human Rights (1981), the Cairo Declaration on Human Rights in Islam, adopted by the Organisation of Islamic Conference (1990)² and first presented at the 1993 Vienna Conference on Human Rights.

The wealth of literature written by contemporary Muslim human rights scholars is enormous. For the purposes of this study I can only highlight a few of these voices, as I describe the religious concepts upon which these scholars have founded human rights. This will enable me below to compare Muslim and Christian concepts of foundationalism. I will focus on views of (1) Abu A'la Mawdūdī and Abou El Fadl, who both base human rights upon the concept of *Khalifa* ('representation'), (2) Abdulaziz Sachedina's theological–ethical underpinnings of human rights in the Islamic theological concept of *fitra* ('natural human moral capacity'), (3) the terminology of *maslahah* ('public general benefit') as developed by Mashood Baderin, and (4) Abdulahi Ahmed An-Na'im's scriptural–hermeneutical approach to human rights foundationalism, based on *naskh* ('abrogation').

Abu A'la Mawdūdī and Khaled Abou El Fadl: 'Representation'

Abu A'la Mawdūdī (1903-79) was among the first Muslim scholars to develop a political interpretation of Islam and a programme for social implementation in order to realise his vision. 'His views have influenced the spread of Islamic revivalism in Central Asia, North Africa and South Asia' (Nasr 1996: 3). From the outset, Mawdūdī challenged the Western monopoly on the universality of the UDHR. In his pamphlet on *Human Rights in Islam*,³ he countered 'West-centric' human rights by claiming that 'Islam has laid down universal fundamental rights for humanity which are to be observed and respected in all circumstances' (Abd'l A. Mawdūdī 1993: 11). Mawdūdī incorporated the Western idiom of democracy and human rights into his interpretation of Islam and of what he envisioned as the ideal Islamic state. He accommodated his position on the Western concept of democracy in the synthesis of 'theodemocracy', which he equated with the Islamic state. In his interpretation, both citizens and government in an Islamic state would abide by the same infallible divine law, *shari'ah*. This kind of a state should be based on the 'true system of Islamic ethos', or religion (*din*), in which

individual rights in the Western sense are superfluous. According to Mawdūdī, the ideal political system of Islam is based on three principles, namely (1) *tawhīd* ('uniqueness (of God)'), (2) *risālah* ('prophethood') and (3) *khilāfah* ('representation'). This last-mentioned concept of *khilāfah* is key to his theory of the foundation of human rights. He defined *khilāfah* as 'representation'. Man is the representative, steward or vice-gerent of God on earth.⁴ He has referred to the Qur'an 2 (30) saying: 'Behold, thy Lord said to the angels: "I will create a vice-gerent on earth"'. As God's vice-gerent, man is required to exercise divine authority within prescribed limits (*hudūd*). 'Every individual in an Islamic society enjoys the rights and powers of the caliphate of God and in this respect all individuals are equal (...) In this respect, the political system of Islam is as perfect a form of democracy as there can be' (Mawdūdī 1993: 10), and it is therefore superior to the secular variant of the West. Mawdūdī's approach to human rights is certainly what might be called a religious 'comprehensive doctrine' (Rawls). The 'god-less' anthropology of the UDHR runs contrary to Mawdūdī's concept of the 'Balanced Universe', in which God is the Creator (*khāliq*) of the human creature (*makhlūq*), who is God's representative, vicegerent or agent on earth. Mawdūdī contended that human rights as they were adopted in the 1948 UDHR, had already existed in Islam for 1,400 years.⁵

Abou El Fadl, a human rights scholar at the University of California, has also elaborated the theological concept of *khilāfah* as the underpinning for a human rights culture as well. In a summary, El Fadl has articulated his theology of human rights in Islam as follows.

- (1) Human beings are God's vice-gerents on earth; (2) this vice-gerency is the basis of individual responsibility; (3) individual responsibility and vice-gerency provide the basis for human rights and equality; (4) human beings in general, and Muslims specifically, have a fundamental obligation to foster justice (and more generally to command right and forbid wrong), and to preserve and promote God's law; (5) divine law must be distinguished from liable human interpretations; and (6) the state should not pretend to embody divine sovereignty and majesty. (Abou El Fadl 2003)

Both Abou El Fadl and Mawdūdī seem to base their (political-cum-theological) theory on the distinction between divine law and the 'man-made laws' of the UDHR. In their view, duties to the Divinity are more important than human rights. Under his guidance humankind is able 'to command right and forbid wrong'. The concept of *khilāfah* places human

rights under the guidance of God's sovereignty. However, El Fadl dismisses 'apologetic' or 'puritan' intellectual responses to human rights within Islam that insist on Islamic particularity and uniqueness and 'reject all universalisms, except the universals of Islam' (El Fadl 2003: 309). Instead, El Fadl has looked for core values within Islam, such as tolerance and dignity, and used them as 'a proverbial door by which the human rights tradition may be integrated in Islam' (Ibid. 313). He maintains that Islamic theology needs a paradigm shift. As it stands right now, he believes Islamic theology is not fully ready for the idea of human beings making demands upon one another before respecting God's rights. The central point he makes is this:

The challenge is not simply for people to coexist, but to take part in an enterprise of goodness by engaging in a purposeful moral discourse... The paradigm shift of which I speak requires that the principle of mercy and justice become the primary divine charge. In this paradigm, God's sovereignty lies in the fact that God is the source and authority that delegated to human beings the charge to achieve justice on earth by fulfilling the virtues that are approximations of divinity. (Ibid. 331)

The status of vice-gerency of humankind has direct implications for peoples' duties and responsibilities. Under the heading of coherence between rights and duties below I will return to this emphasis on duty, obligation or responsibility to God, as opposed to human rights proper. First, however, I will briefly discuss some other Muslim approaches to the grounding of human rights.

Abdulaziz Sachedina: 'Innate nature' and 'political theology'

Abdulaziz Sachedina, a professor of religious studies at University of Virginia, is a vigorous seeker of common ground between Islam and secular human rights. He situates the possible compatibility of the two concepts in the Islamic concept of *fitra* ('innate nature') (cf. Flynn 2014: 20).⁶ This Islamic theological concept can be based on the Qur'anic concept of God who honours humanity with 'noble nature' (*karāmah*), or human dignity. As part of the divine honour of noble nature or human dignity, all human beings are endowed with the innate intuition that differentiates between ethically right and wrong behaviour. Sachedina defines *fitra* as the human 'innate nature' that is a 'receptacle for intuitive reason'. According to him, the Qur'anic notion of *fitra* makes it 'legitimate to speak about [the] Islamic idea of natural law' (Sachedina 2009:

52), even if there is no discourse in Muslim thought on concepts such as natural law or natural right per se. He has thus identified a logical point of entry for a human rights language in the concept of *fitra*. The notion of a natural or innate constitution of the human being is the core doctrine of the Qur'anic insistence on God's purposive creation of humanity. Based on this theological–ethical foundation for human rights, Sachedina has developed an Islamic 'political theology' as 'the action plan for the implementation of religious ideals for a just public order' (Ibid. 25). With regard to the foundation of the UDHR, Sachedina raises the pertinent question whether there is 'a single moral foundation for human rights that spans many cultures. Or whether there are many culturally specific moral foundations, or none' (Ibid. 8). It is clear that the author prefers the pluralist grounding of the concept of human rights in a diverse global context. Using the concept of *fitra*, he hopes to convince 'traditional Muslim opponents of human rights discourse' by delving into 'the depths of Islamic heritage to relate Islamic revelation and its political theology to natural law' (Ibid. 113). Sachedina's 'political theology' echoes Stackhouse's 'public theology', and this creates scope for action-oriented cross-cultural dialogue on human rights.

Mashood Baderin: 'General welfare'

Mashood Baderin is a legal scholar based in the United Kingdom. In his book *International Human Rights and Islamic Law*, he has taken a 'dialogical approach' to international human rights law and Islamic law. He contends that Islamic law 'should be able to contribute to the realization of its ideals and also to the achievement of its universal observation, especially in the Muslim world' (Baderin 2003: 32). Within the interpretational framework of the objectives of *shari'ah*, (*maqāsid al-shari'ah*), he uses the application of Islamic law in its terminology of *maslahah* (general welfare). The ethical principle of *maslahah*, as the promotion of human welfare and the prevention of harm, represents in his view 'a veritable Islamic legal doctrine for the realization of international human rights within the dispensation of Islamic law' (Ibid. 43). By thus grounding international human rights law in the principle of *maslahah*, Baderin has introduced Islamic normative values into the discourse on the universality of human rights.

While human rights specifically aim at protecting the rights of individuals, the ultimate aim is equally to guarantee the benefit and welfare of human

beings as a whole wherever they may be. Protecting the welfare of individuals does ultimately ensure communal/public welfare and vice versa. This makes the doctrine of *maslahah* very relevant in the discussion of human rights under Islamic law. (Ibid.)

The concept of *maslahah* as one of the *maqāsid al-sharī'ah* thus allows for a faith-based foundation of human rights. Moreover, Baderin's concept of *maslahah* highlights the Islamic emphasis on a balance between individual and communal rights and interests. As a counterbalance to the individualistic approach to human rights that predominates in the West, the mutual dependency between individual and communal rights in terms of *maslahah* has something to offer to the global discourse on human rights, namely under the heading of the legal principle of the 'margin of appreciation'. In the UDHR the importance of the wider community is only mentioned once, in Article 29, while in specific contexts, the rights–duties interdependency is key, as has been symbolised in the often-quoted Bantu expression of *ubuntu*, described in Chapter 2, where individuals are embedded within groups and communities.

Abdulahi Ahmed An-Na'im: Reversed abrogation

With regard to the issue of the grounding of human rights, I will now discuss Abdulahi Ahmed An-Na'im's scriptural hermeneutical approach. An-Na'im has explored the possibilities of religious and cultural reinterpretation within the context of his own Islamic and Sudanese tradition, in order to enhance the possible universal legitimacy of human rights. Referring to the intention of the first article of the UDHR, he states that 'the question of the moral and philosophical foundation of human rights remains both difficult to answer and critical for the practical implementation of these rights' (An-Na'im 2003: 28). In his *Towards an Islamic Reformation: civil liberties, human rights and international law* (1990), An-Na'im has proposed 'a reformation' by inviting 'clear statements of the inconsistencies between *sharī'ah* and universal human rights' (An-Na'im 1990: 172). According to him, inconsistencies can be found in both criminal law and civil law. In order to solve them, he has looked for possible tools within *'ilm al-fiqh* (the science of interpretation of Islamic law) for a reform of the *sharī'ah*. He has identified such a tool in the principle of *naskh* (abrogation), developed within Qur'anic sciences (*'ulūm al-qur'ān*). Generally, *naskh* implies that lenient regulations are supposed to be abolished or replaced by stricter ones. According to An-Na'im, inconsistencies be-

tween Islamic law and secular international human rights law can be bridged by means of the technique of the reversed *naskh*. Human rights can be built in the Muslim world on the foundation of the eternal message of the original, universal Meccan solidarity, as opposed to the historical, contextual Medina revelations which applied only temporarily. The rights of women and non-Muslim minorities, for instance, are respected, since, by the device of reversed *naskh*, Meccan universal and inclusive verses are given priority over the contextual and temporarily Medinan ones. Women and non-Muslims are able to participate fully in a society that equals the essential Meccan message of Islam.

At an earlier stage of my study of Islam and human rights, I discovered that there is quite some resistance to An-Na'im's approach. In Egypt (1990-91) I interviewed a range of scholars, including An-Na'im himself. Despite the critique on his seemingly illogical method of reversed *naskh*⁷ and other critiques of his work,⁸ he continues to be one of the most frequently cited and innovative scholars in the field of grounding human rights on Islamic legal tenets.

COHERENCE IN CHRISTIAN AND MUSLIM THOUGHT

Having highlighted some scholarly contributions to the discourse on the grounding of human rights in Christianity and Islam, I now turn to what Amartya Sen has described as the critique of the coherence between human rights and duties. In Sen's social choice theoretical framework, no human rights theory can avoid addressing the complicated ethical issue of the interdependence of rights and duties. With regard to the coherence between rights and duties, he speaks of 'perfect' and 'imperfect obligations'. As discussed in the previous chapter, 'imperfect obligations' are difficult to integrate into a legal framework. Sen has underscored the importance of both perfect and imperfect obligations in ethical terms and has given them equal status in his human rights theory. Using his principle of 'reasonable help to third parties', Sen has founded human rights in morality, although not in a specific religious sense. I think that Sen's theoretical framework can nonetheless offer a valuable tool for my search for Christian and Muslim thought on human rights as 'third party obligations' (Sen 2004: 342).

Hans Küng: Rights and responsibilities

It is possible to identify several Christian and Muslim academic voices in the discourse on the correlation between human rights and duties in the religious realm. In this section, I will concentrate on only a few of them. Hans Küng is probably the best known theologian in the field of human rights from a Christian perspective. He has endeavoured to complement the UDHR with the *Universal Declaration of Human Responsibilities*. Through the *InterAction Council* (September 1997),⁹ and in close collaboration with scholars and politicians, he has pushed for the recognition of the document to stress the importance of duties and human responsibilities in addition to rights. Küng is without a doubt the driving force behind the discourse on the coherence of rights and responsibilities from a religious-ethical angle. By involving the political leaders of his time, he managed to prioritise the question on the international agenda. In a series of articles and books, Küng has opted for a global ethic to which all cultures and religions could adhere. The Declaration of Human Responsibilities does not interfere with the UDHR, but ‘supports and reinforces the Declaration of Human Rights from an ethical perspective’, thus renewing the UDHR’s ‘full acceptance of the dignity of all people; their inalienable freedom and equality, and their solidarity with one another’ (Küng 1998: 109). According to Küng, the idea of the unconditional dignity of the human person and the connotation of solidarity buttresses and presupposes both rights and responsibilities (Ibid. 115). He asserts that rights and responsibilities, although they can be neatly distinguished, cannot be separated from one another. They are two related dimensions of the human being both individually and socially. He has traced this balance between rights and responsibilities back to the French revolutionary parliament of 1789, which already acknowledged that rights insulated from responsibilities cannot function properly (Ibid. 110). Küng has negatively evaluated the overemphasis of rights and the neglect of responsibilities in contemporary society. In reference to a Western European ‘society of claim’, he has lamented the fact that, ‘[i]nstead of the culture of human rights which is striven for, there is often the unculture of exaggerated claims to rights which ignores the intentions of human rights’ (Ibid. 111). He thinks the ‘weakness of human rights’ is not due to the concept itself, but to the unwillingness of those who have power and who are responsible to implement rights. Küng is outspoken therefore in

stating that ‘an ethical impulse and the motivation of norms are needed for an effective realization of human rights’ (Ibid.).

There are some striking resemblances here between Sen’s and K  ng’s approaches, though they come from quite different angles. A key feature in K  ng’s approach, as in Sen’s, is that responsibilities or duties are not, and cannot be framed in a legal codification alone. Both Sen and K  ng regard the value of responsibilities and duties primarily as a moral and motivational appeal, and not as a legal imperative. In K  ng’s words, duties aim at ‘taking responsibility voluntarily’, and are thus morally – rather than legally – binding. In this way, rights and responsibilities do not restrict each other, but mutually supplement each other in a fruitful way (Ibid. 114, 118). Without mentioning Immanuel Kant explicitly, K  ng has talked about two types of responsibilities, which are (1) obligations in the narrower sense, ‘complete’ (Ibid. 119), and (2) responsibilities in the wider sense, ‘incomplete’, or ethical responsibilities such as those prompted by conscience, humanity, and love based on commitment. Incomplete obligations are based on the individual’s insight and they cannot be compelled by the state through legislation. As a native-speaking German scholar, K  ng distinguishes among the three Anglo-American connotations of ‘duties’, ‘obligations’ and ‘responsibilities’, whereas the German language has only one, namely *Pflicht*. Thus, K  ng and Sen, concur that law and ethics must be distinguished in the discourse on human rights. Both Sen and K  ng stress the importance of responsibilities in the sense of ‘imperfect’ or ‘incomplete’ obligations rather than rights. What both authors emphasise is the moral, motivational foundation of international human rights law, by stressing the insertion of a language of obligation, duty and responsibility into human rights talk. This moral dimension, outside the legal framework, needs more attention in the human rights debate if human rights are to become truly universal. The human dignity-based *Universal Declaration on Human Responsibilities* underscores the fundamental ethical imperative to treat others as one would wish to be treated oneself. Nobody may be used as a means to an end, but every individual is an end in oneself. In this regard, K  ng regards the Universal Declaration of Human Responsibilities as a duty-bound and religiously-driven endeavour resulting from a:

[R]eshaping of the four elementary imperatives of humanity (not to kill, steal, lie, commit sexual immorality) translated for our time. Despite all the differences between the faiths, these can already be found in Patanjali, the

founder of Yoga, the Bhagavad-Gita and the Buddhist canon, and of course in the Hebrew Bible, the New Testament, the Qur'an, and indeed in all the great religions and ethical traditions of humankind. (Ibid. 121)

These 'elementary imperatives', that are present in all religions and world views, also lead us to certain Qur'anic perspectives on the coherence of rights and duties in Muslim thought.

Muslim perspectives on coherence

Many Muslim voices on human rights criticise the UDHR for its lack of coherence between rights and duties. In the UDHR, only Article 29 speaks explicitly of 'duties'. In Islamic alternative declarations of human rights, such as the Cairo Declaration on Human Rights, rights and duties go almost always hand in hand. Like the Hebrew Bible and the New Testament,¹⁰ the Qur'an has numerous references to duties (*farūd*), while there are only few references to rights (*huqūq*). The Arabic term human rights, or *huqūq al-insān*, has only recently become part of Muslim scholars' common vocabulary. The terminology of duties prevails over rights in their discourse. The Pakistani scholar Fazlur Rahman (1919-88), for instance, stated that in Qur'anic perspective, obligations and moral responsibility have priority over rights.

'Obligations' and 'rights' are the obverse and converse of the same coin; the one obviously cannot subsist for any length of time without the other. Indeed, the Qur'an is a document that primarily exhorts to virtue and a strong sense of moral responsibility, suggesting that a comprehensive sense of responsibility can very well take care of all human rights; but the converse is not so true – indeed, a society that begins to understand 'rights' in terms of permissiveness and lawlessness spells its own inevitable doom'. (Rahman 2009: 46)

According to Rahman, human rights have to be included in a 'comprehensive sense of responsibility', since rights that are not duty-bound may lead to decadence in society.

Mawdūdī even placed the right–duty coherence in the context of a comprehensive system of a 'balanced universe', in which humans are answerable for their actions in the hereafter. As has been seen, Mawdūdī's theory about the concept of *khilāfah* places the human being as a viceroy under the sovereignty of God, who is the supreme lawgiver. Both individuals and the community at large should consider their duties as a

sacred trust from God 'to be used in the belief that one has to render an account of one's actions in the Hereafter' (Mawdūdī 1993: 11). The dimension of the hereafter, alongside the humankind's answerability in terms of duties under God's final judgement and transcendence, constitutes Mawdūdī's world view of 'a balanced universe'. Human resistance against this universal divine system of justice results in disrespect for: (1) 'the rights of God which every human being is obliged to fulfil', (2) 'his own rights upon his own self' or, the rights of the individual, (3) 'the rights of other people over him', or, 'the rights of others', and (4) 'the rights of those powers and resources which God has placed in his service and has empowered him to use for his benefit', or 'the rights of all creatures' (Mawdūdī 1996: 102). God is 'the Ultimate Fundamental Reality' before whom man stands in awe. Man is '*abd-allah*, or the servant of God, who alone has rights. According to Mawdūdī, 'as we speak of human rights in Islam we mean those rights granted by God. Rights granted by kings or legislative assemblies can be withdrawn as easily as they are conferred; but no individual and no institution have the authority to withdraw the rights conferred by God' (Mawdūdī 1993: 15). Rights of God therefore have priority over 'exaggerated' individual rights. Moreover, rights always come with correlative duties: the rights of God first and foremost imply human duties, because 'the primary and foremost right of God is that man should have faith in Him alone' (Mawdūdī 1996: 103). In their rights talk from the Islamic perspective, both Mawdūdī and Sayyid Qutb, the two ideologues of the Muslim Brotherhood, give priority to the religious concept of duty in the sense of being answerable to God. The *sharī'ah* notion of public order (*hisbah*), which is based on the Qur'anic divine obligation of 'commanding what is good and prohibiting what is wrong', informs their thinking on matters of governance and human rights. For Qutb, it is obvious that the poor have the right to *ṣakāt*, or obligatory almsgiving, to be furnished by the better-off. To give the needy a decent living is the religious duty of the more wealthier members of the community. According to Irene Oh, professor of Religious Studies, 'Qutb overemphasizes the right of the poor to take *ṣakat* and proclaims that the poor have the duty themselves to lay claim to charitable funds' (Oh 2007: 28). In other words, almsgiving thus becomes a matter of a duty of the rich to the poor, instead of mere charity that offends the poor person's dignity. She has stated in her book *The Rights of God: Islam, Human Rights, and Comparative Ethics*, that 'traditional-

ists' such as Mawdūdī and Qutb show that Islam is capable of accommodating human rights. In relation to their position on the right–duty coherence, Oh has even contended that, '[t]he characterization of material and institutional rights and obligations within the writings of Mawdūdī and Qutb, for example, might be viewed as socialist or communist' (Ibid. 30).

Abou El Fadl has criticised their doctrine, and has argued that the writings of 'dogmatists' Mawdūdī and Qutb were products of the *haka-miyya* (dominion or sovereignty) debates, which overemphasise the place of duty in Islamic thought. Abou El Fadl has struck a balance in the right–duty coherence discourse in Islamic history. While referring to comparable trends in Roman (natural) law, and subsequent Western legal developments, he has demonstrated that despite the fact that 'the idea of duties (*wajibāt*) is as well established in the Islamic tradition as the notion of rights (*huqūq*), the Islamic juristic tradition does not show a preference for one over the other. In fact, some pre-modern jurists have asserted that to every duty there is a reciprocal right, and vice versa' (El Fadl 2003: 338). El Fadl asserts that the widespread notion that duty-based perspectives predominate in Islam is the result of a backlash against criticism of *sharī'ah*. According to him, duty-oriented conceptions of rights suited better socialist and nationalist development ideologies since the 1950s and 1960s, despite, rather than due to, puritan voices such as Mawdūdī and Qutb. In this era, Muslim countries were among the states that demanded positive socio-economic rights (to be implemented as the duty of the state), rather than negative civil-political rights (of individuals against the nation-state). The negative individual human rights system was confronted by the positive postcolonial approach to human rights in which states are obliged to further the rights of their citizens. Mawdūdī's comprehensive system of duties and rights can be understood against the background of his critique of the UDHR with its claim to represent universal values. This brings me to the debate between cultural critique and universalism.

CULTURAL CRITIQUE IN MUSLIM HUMAN RIGHTS THOUGHT

In his theory of human rights, Sen has phrased the question of cultural relativism as follows: 'How can proposals of human rights be defended or challenged, and how should their claim to a universal status be assessed, especially in a world with much cultural variation and widely di-

verse practice?’ (Sen 2004: 319). He has addressed the question of cultural critiques of human rights by stating that:

The universality of human rights relates to the idea of survivability in unobstructed discussion (...) through an *interactive* process, in particular by examining what would survive in public discussion, given a reasonably free flow of information and uncurbed opportunity to discuss differing points of view. Adam Smith’s insistence that ethical scrutiny requires examining moral beliefs from, *inter alia*, ‘a certain distance’ has a direct bearing on the connection of human rights to global public reasoning. (Ibid. 320)

According to Sen, the unobstructed, public discussion of the moral beliefs of human rights is key. The connection between human rights and global reasoning proves its ‘dialogic merit’ by including distinct cultural and religious voices. The literature on what Sen has called the ‘cultural critique’ is immense. The sociologist Rhoda Howard, for instance, has provided an overview of the academic debate in the 1980s and 1990s, when the cultural relativism debate was at its height. She has in particular discussed the literature on African concepts of human rights. While a number of African human rights scholars have concurred with the universal consensus of the UDHR, there are others who have adopted a more specifically African approach. According to Howard, African approaches to human rights stress three interrelated factors: (1) the international system, following the historical and systematic economic exploitation related to human rights violations in Africa, more specifically the right to development, (2) the issue of poverty in Africa that has caused the lack of interest in ‘Western’ civil and political rights they cannot afford, and (3) the issue of communalism of African society: ‘the notion that human rights are inappropriate to a communal society; if anything, group rights should be stressed over individual rights’ (Howard 1990: 161). While acknowledging these points, Howard criticises scholars inclined to cultural relativism who define African culture as ‘undifferentiable, unchangeable, and non-political’ (Ibid. 172). She argues that cultures are not holistic entities, as functionalist (former colonialist) anthropologies perceived them to be. She has given a school textbook example of this functionalist approach by discussing Jomo Kenyatta’s thought. As the first president of Kenya after independence, Kenyatta, a trained anthropologist, ‘used the functionalist theory to defend his Kikuyu people against Scottish missionary attempts to ban female circumcision, arguing that the practice was an integral and indispensable part of the Kikuyu

cultural fabric'.¹¹ However, as she argues practices such as FGM, ritual killings of twin babies and indigenous slavery are now ruled out under international human rights law (Ibid. 173). She has also challenged the alleged antagonism between African communalism versus Western individualism. According to her, Africa and the Western world have both changed in respect of communalism and individualism.

The peasant worldview has been eroded in the Western world by large-scale social changes, especially by industrialization and urbanization. Wherever such social changes occur, the communalist, role-oriented notion of personhood breaks down (especially amongst men), to be replaced by the values of secularism, personal privacy, and liberalism. This process is easily observable in the more developed economies of contemporary Africa, such as Nigeria and Kenya. There, as elsewhere in the last two or three centuries, the traditional concept of solidarity is giving way to individualism. (Ibid. 170)

African human rights scholars such as Asmarom Legesse and Claude Ake, however, have put stress on the rights of collectivities against Western possessive individualism. Ake's statement that 'rights appeal to people with a full stomach' underlines that individual rights are perceived as a luxury in Africa. In his view, the communal aspect of social justice should be adapted to enable individuals to make enforceable claims against their community and the state. According to Howard, however, '[to] deny Africans the protection that human rights can provide against both the state and other members of their society, because of fear of individualism thought to be consequent to the breakdown of the old social order, is both to ignore historical and sociological reality and to deny social justice in the modern world' (Ibid. 183). In an interconnected world, the discourse of cultural relativism versus universalism will need to gradually be integrated into the overall dialogue on human rights culture. In Sen's theoretical framework, the integration of relativistic and universalistic tendencies in human rights talk is part of the global discourse on issues of human rights culture. Sen regards public debate as the dialogical merit of human rights ethical values. In order to achieve such a universality of human rights, there is room for different cultural and religious voices 'from far and near'. Asian and African values of the community and Western individualism are no monoliths in themselves, nor are they mutually exclusive.

Bassam Tibi, a German scholar of Syrian descent and a co-founder of the Arab Organization for Human Rights, regards Western postmodernists and Islamists (Tibi 2012)¹² in their respective roles of cultural relativists and neo-absolutists as ‘strange bedfellows’. Cultural relativists deny that values can have a universal claim, and this means that there can be no value conflicts. They are not ready for what Tibi calls ‘the venture of bridging’. He finds common ground between the Western and Muslim world in shared humanism. ‘The universality of a humanism shared in the past between Europe and Islam in common traditions presupposes the acceptance of a universality of core values. The implication is to challenge the damaging confinements maintained today by cultural relativism. It is scandalous that cultural relativists do not even shy away from dismissing the universality of human rights’ (Ibid. 88). ‘Cultural relativism in the West, which denies the universality of values (e.g. those of human rights)’, according to Tibi, ‘is self-defeating and self-destructive’ (Ibid. 174). Whereas Tibi surpasses the divide of universalism versus cultural relativism by referring to a common Islamic–Western tradition of humanistic values, other Muslim human rights scholars have attempted to stay within the fold of Islam by using more theological and legal terms.

I will now briefly discuss the more juridical approaches of Masood Baderin (*maslahah* and ‘*margin of appreciation*’) and of An-Na’im (*munwadanah* or *reciprocity*). But first I will consider aspects of Sachedina’s thoughts, which are inspired by an Islamic theological perspective. After observing and participating in various interfaith gatherings, Sachedina has asserted that ‘the impending danger to a human rights regime will come from both moral relativist arguments and exclusionary theological doctrines’ (Sachedina 2009: 186). He has described the relativist argument in the same manner as Tibi, as ‘self-defeatist’. When cultural relativists enter the human rights discourse, ‘they unwittingly endorse human rights violations as acceptable in the context of their own particular cultural valuation of human dignity’(...) ‘Muslim societies have suffered from certain social and cultural practices that have been justified on the relative cultural grounds: “We are different” ’ (Ibid.). According to Tibi and Sachedina, traditionalist Muslim scholars have a large following among the masses, and therefore constitute a factor that must be taken seriously. Whereas Tibi seems to have given up on the possibility of any cross-cultural bridging with this sector of society, Sachedina seems less de-

spondent: 'even the staunchest opponents of the UDHR, who regard the document as being morally imperialistic and culturally ethnocentric, concede the fact that human beings have rights that accrue to them as humans' (Ibid. 6). For Sachedina, '[t]raditional Muslim support, in the absence of politically legitimate governance in almost all Muslim countries, is the most important venue left for the human rights discourse to find its proper place in Muslim social and political consciousness' (Ibid. 22).

Tibi speaks of developing an 'Islamic grammar of humanism', while Sachedina prefers to engage with the theological and ethical foundations of Islamic Law, since it is 'unhelpful to dismiss Islamic or any other religious comprehensive doctrine as parochial or relativist with no impact on the development of a human rights regime' (Ibid. 14, cf. Ibid. 186). Approaching the issue from the other side of the spectrum, Sachedina has criticised the literature of secularly educated Muslim intellectuals who, while they are highly appreciated in the West, 'barely scratch the surface of the real issues that confront the cultural legitimacy of international human rights' (Ibid. 21). These real issues include the communalist features of Muslim societies and the role of divine law versus the UDHR's individualist and secular approach. We have already seen how Sachedina's foundational concept of *fitra* provides the theological-ontological status of human personhood and dignity from an Islamic perspective. According to him, this 'epistemic shift' from the juridical to a theological paradigm must occur in order to assess the human rights discourse in the Muslim world. 'This will in turn contribute to the comparative foundational theory by sharpening the boundaries of secular-cum-religious norms of human rights as well as pointing to different ways that categories of political theology play themselves out in different cultural settings' (Ibid. 23).¹³ A common ethical discourse on human rights is needed to solve these cultural critiques. In terms of Sen's theory, these controversies are not an embarrassment, but are part of the dialogical merit of the ongoing public discourse on human rights as ethical affirmations.

In Mashood Baderin's view, a paradigm shift from a juridical to a theological framework is not necessary to overcome the universalist versus relativist or religiously particularistic approaches. Baderin has explored whether the Islamic legal doctrine of *maslahah* and the European human rights doctrine of 'margin of appreciation' can be bridged in practice. The terminology of *maslahah* has been described above as one of the

objectives of Islamic law. The 'margin of appreciation' is defined within the European human rights regime as 'the line at which international supervision should give way to a State Party's discretion in enacting or enforcing its laws' (Baderin 2003: 231). Baderin differentiates between 'strict universalism' and cultural relativism. Strict or exclusive universalism is mainly Western, based on language such as 'every human being', 'all human persons', 'everyone' being entitled to rights. Over and against cultural inferiority complexes, Baderin has stressed the need for an 'objective evaluation of what every civilization can contribute to universalism in human rights law' (Ibid. 29). This is what may be called a 'universal universalism', instead of (Western) strict universalism that Mutua has described as 'provincialism masquerading as universalism' (Mutua in Baderin 2003: 9). Baderin regards the 'margin of appreciation' doctrine as a useful tool in view of the dialogue or consensus approach as 'the reference point on Islamic values and norms in the determination of any necessary margin of appreciation for Islamic values by the UN international human rights bodies' (Ibid. 234). In addressing issues such as homosexuality, abortion, blasphemy and other moral issues, the 'margin of appreciation' can provide a system that complements European-wide concepts of human rights with Islamic regional approaches to these issues. Baderin has therefore envisioned a 'paradigm shift from traditional hard-line interpretations of Islamic law and also from exclusionist interpretations of human rights law that do not consider Islamic normative values at all' (Ibid. 47).

While advocating 'a cross-cultural search for universal values in support for universal human rights', An-Na'im has used the universalism versus cultural relativism debate to clarify his defence of the need to provide cultural legitimacy for human rights (An-Na'im 1990: 339-40). He speaks of a universal rational principle to the effect that strong evidence of a contrary view should induce a person to re-examine her position. In his own Sudanese culture, the universal rational principle is expressed in the maxim '[i]f two people tell you that your head is missing, you better check to see if it is still there'. In other words, the more widely our positions are challenged by others, the more likely we are to reconsider those positions (Ibid. 341). This is reminiscent of Sen's open impartiality principle in human rights issues. An-Na'im therefore regards 'weak' cultural relativism, which respects the essential universality of human rights, justified as opposed to 'excessive' cultural relativism. In

this way, the theory of cultural relativism can provide an effective approach to cross-cultural evaluation of repressive and cruel cultural practices. It thus warrants a proper balance between upholding a certain cultural custom as a legal right to self-determination, and as a safeguard against the perils of ethnicity. At the same time, cross-cultural evaluations help to protect and promote universal human values. 'The more it can be shown that a particular human right is based on a value or norm accepted by the widest range of cultural traditions, the less our efforts to protect and promote human rights will be open to charges of ethnocentricity or cultural imperialism' (Ibid. 343). In order to prevent excessive cultural relativism from legitimising certain objectionable, degrading and inhuman practices, An-Na'im has proposed the criterion of reciprocity. No one should tolerate any kind of treatment of another person that they would not accept for themselves. Any human rights abuse can be judged by external standards using this reciprocal principle. With regard to the application of *shari'ah* to non-Muslims, for instance, the principle of reciprocity means that 'since Muslims would demand the right to decide what law should apply to them, and would not accept being subjected to the religious laws of non-Muslims, they should grant the same right to non-Muslims' (Ibid. 345). The same principle applies to the equality of men and women. Men should concede to women the same entitlements they would demand for themselves. An-Na'im applies the normative principle of reciprocity to the rights of religious, ethnic and linguistic minorities and to other victims of human rights violations. In a personal interview with him, he stated that, 'Our ultimate objective is to achieve universality through our relativities so that each of us can remain a Muslim and committed to human rights or remain a Buddhist and committed to universal human rights, etcetera'. 'I myself subscribe to the universality of Human Rights from my Islamic, African, Sudanese cultural perspective and you from your own cultural background'.¹⁴ An-Na'im's cross-cultural approach brings us back to Sen's dialogical merit regarding interreligious interaction on matters related to human rights. After having described Sen's threefold criticism on human rights and applying these critiques in intrareligious, Christian and Muslim scholarly discourses, I will now discuss the possibility of an interreligious dialogue on universal human rights.

CHRISTIAN-MUSLIM DIALOGUE ON HUMAN RIGHTS CULTURE

Does the epithet ‘universal’ of the UDHR refer to Western (neo-)colonial imperialism, this time not as an economic or political but as a juridical connotation? ‘Is the ideology underlying ‘universal’ human rights not typically Western?’ (Van der Ven & Ziebertz 2012: 102). Riffat Hassan, professor in humanities and religious studies, has been extensively involved in interreligious dialogue, with a particular focus on human rights in religious traditions. According to her, though the UDHR is called ‘universal’, it ‘was articulated along the lines of historical trends of the Western world during the last three centuries, and a certain philosophical anthropology of individualistic humanism which helped justify them’ (Hassan 1995: 25). What is needed, according to Hassan, is a critical review of the idea that the Qur’an is a complete code of life. ‘To many Muslims the Qur’an is the Magna Carta of human rights and a large part of its concern is to free human beings from the bondage of traditionalism, authoritarianism (religious, political, or any other), tribalism, racism sexism, slavery or anything else that prohibits or inhibits human beings from actualizing the Qur’anic vision of human destiny embodied in the classic proclamation: “Toward Allah is thy limit” ’ (Ibid. 27). Under ‘General Rights’, she gives an account of the Qur’an’s affirmation of fundamental rights. These are, respectively, right to life, right to respect, right to justice, right to freedom, right to acquire knowledge, right to sustenance, right to work, right to privacy, right to protection from slander, backbiting, and ridicule, right to develop one’s aesthetic sensibilities and enjoy the bounties created by God, and the right to leave one’s homeland under oppressive conditions.

According to Riffat Hassan, it is critically important for contemporary Muslims to realise that they will receive the guidance they seek from the Qur’an not by looking for selected verses on specific subjects but by understanding its ethical framework consisting of universal principles which form the core of Islam.

To me the challenge of being Muslim in the 21st century means carrying forward the message of the Muslim modernists who have raised the cry ‘Back to the Qur’an’ (which, in effect, also means ‘Forward with the Qur’an’)...and insisted on the importance of *ijtihad*...as a means of freeing Muslim thought from the dead weight of outmoded traditionalism. (Hassan 2007: 179)

She concludes that ‘a new perspective on human rights (including women’s rights) grounded in normative Islamic ideas of universalism, rationalism, moderation, social justice and compassion must be disseminated as widely as possible’ (Ibid. 184).

Tibi has underscored that, [w]ithout doubt, the idea of human rights originated in this European tradition, but today it is considered a part of human heritage in general’ (Tibi 1990: 113). He has differentiated between the globalisation of unchangeable structures and the *universalisation of values* that can change and adapt to people who belong to different communities. According to Tibi – who acknowledges that there is an intercivilisational value conflict between Islam and the West as civilisations with universal claims – cross-cultural bridging on human rights is what our time needs (Tibi 2012: 34). In line with Sen’s dialogical merit or global discourse on human rights, the intercivilization dialogue on human rights as values is key to achieve this bridging.

Instead of ‘imposed universalism’, Tibi has proposed a project of devising a cross-cultural foundation of the idea of human rights. For him it is possible ‘to establish universality on cross-cultural grounds’ (Ibid. 109). He distinguishes between cultural diversity and cultural relativism. He acknowledges cultural diversity positively as long as cultural values are not essentialised or given precedence over democracy. ‘Humanism could accommodate diversity, but if “difference” contradicts the related cross-cultural universal values, then humanism needs to have the right to veto any cultural difference’ (Ibid. 110). He thinks a local approach to culture, in which cultural diversity is honoured, is more promising than a civilisational approach. Tibi thinks that the present global order shows a simultaneity of structural globalisation and culturally particularistic fragmentation and, therefore, a search for consensus on shared global values is needed. Today’s tensions and conflicts are rooted in differences based on cultural and religious diversity. He therefore regards discourse on possible shared values as crucially important. His plea for a shared humanism is based on the search for common values. An international morality can be established on a consensus about shared values.

Tibi’s contribution therefore lies in the effort of a cross-cultural bridging between Western and Islamic divides by searching for ‘an Islamic grammar of humanism that would underpin this indigenization of individual human rights that have emanated from European humanism’ (Ibid. 107). Acknowledging the fact that religion can be a dividing force

in politics, he pleads for secular grounds for interaction. 'What is an absolute truth for the one party – as in the case in any religion – is a threat to the other' (...) 'People of different religions cannot debate their faith, but they can do so this with regard to secular values about ways for living together in peace' (Ibid. 38). Tibi is very critical about current interreligious dialogues which he describes as 'a lucrative business of event management'. Dialogue in his view should be viewed as a means of conflict resolution. This 'event management of Christian–Muslim understanding', which he thinks is supposed to happen as an indication of good will, is not an attempt at conflict resolution. Tibi has also criticised Hans Küng's 'world ethos', which he regards as 'Eurocentric wishful thinking' (Ibid. 83), or unrealistic (Ibid. 106). He has proposed an alternative for the 'clash of civilizations' (Huntington): a shared discourse on universal values such as human rights, as based on shared humanism (Ibid. 88). His humanistic basis for such bridging is quite unique, compared to more theological approaches such as Sachedina's, Baderin's and An-Na'im's. Sachedina has found in the theological concept of *fitra* the innate capability in human beings to distinguish good from evil, the rationale for accommodating the Muslim world within the human rights project. 'The divine gift requires humanity, regardless of its affiliation to particular religious paths, to live with each other and work toward justice and peace in the world' (Sachedina 2009: 205). Thus, whereas Tibi envisions a peaceful world based on a shared humanistic ethical discourse, Sachedina searches for an overlapping consensus that for Muslims is based on the Islamic theological principle of *fitra*.

Like Tibi, Sachedina is critical about the effectiveness of interfaith dialogue. According to him, interfaith dialogue has remained, 'political–academic without much impact on ordinary believers' perspectives of the religious other' (Ibid. 187). In my view, his 'comparative foundational theory' of natural law in the Islamic theological terminology of *fitra* and 'natural law' in Christian thought can help to advance interreligious interaction in the public sphere. His 'political theology' which is in line with Stackhouse's 'public theology', can open windows of opportunity for interfaith discourse in the public sphere on human rights as based on natural law (Delacoura 2007: 29–32).¹⁵ Boaventura De Sousa Santos sees 'great potential for intercultural translation between reconstructed human rights and progressive pluralistic political theologies – whether Christian, Islamic, or others'.

I do not think that within the ambit of progressive theologies, this task will be exceedingly difficult. For instance, the fact that Islam does not accept a secularized conception of human dignity, and that Christian theologies think that human dignity is rooted in the image and resemblance of God, is not an obstacle to finding in their sacred books and law (both *shari'a* and the Bible) conceptions of human dignity that are not incommensurate in practice with the conception of human dignity underlying human rights. (Santos 2015: 61)

There is every sign that a scholarly dialogue on proposed methodologies such as Sachedina's *fitra* and Tibi's 'cross-cultural bridging' approaches to international human rights law is possible. Baderin's dialogic approach which brings the European concept of 'the margin of appreciation' and the Islamic jurisprudence principle of *maslahah* (public good) together, is another example of an attempt to harmonise religion and human rights in practice. An-Na'im has also contributed to the cross-cultural approach by legitimising reciprocal human rights in local cultures and religious traditions, which he sees as 'a matter of vital importance for the survival and future development of the human rights paradigm itself' (An-Na'im 2003: 40). His hermeneutical approach, based on the Muslim juridical concept of *naskh*, can contribute to further the interfaith agenda for cross-cultural dialogue to effect non-violent conflict resolution in the framework of a joint human rights culture. Space for scriptural hermeneutics can help enhance the cross-cultural approach of a joint human rights culture. Founding such a human rights culture on religious concepts such as creation (*imago Dei*) from a Christian perspective, or on Mawdūdī's image of *khilafah* can be a first step to identifying common ground. Irene Oh has proposed a method of comparative religious ethics for introducing religious thought into human rights theory. 'Comparative religious ethics provides for a methodological structure for difficult but necessary interreligious and cross-cultural conversations about human rights in Islam' (Oh 2007: 2).

The scholarly concepts described above open windows of opportunity to reflect on possibilities for interreligious cooperation, or diapraxis. I will conclude the present chapter with a short investigation of a possible hermeneutical space for interreligious interaction.

Hermeneutical scope for *diapraxis*:
Hebrew 10:24 and al-mā'ida (5)48

Can an interreligious *diapraxis* actually be based on scriptural hermeneutics? From a scriptural hermeneutical perspective it is possible to ground the concept of *diapraxis* in Christian–Muslim relations in the Bible and the Qur'an, respectively. In the Bible, we could, for instance, refer to texts such as Hebrews 10:24: 'We must consider how to rouse one another to love and good works', as it is translated by the African Bible, or in the NRSV, 'And let us consider how to provoke one another to love and good deeds'. In this regard, Samuel Kibicho has also referred to Matthew 7:16, 'By their fruits you will know them' (Kibicho in Wijzen 2007: 149). Hebrews 10:24 is one of a number of biblical verses that admonish its readers to do good deeds. This exhortation to contribute actively to the common good forms a usual part of New Testament *parenesis* (admonition, exhortation) (cf. Rom. 12:17, 2 Cor. 8:21, 1 Tim. 5:25, 6:18, Tit. 2:7, 14, 1 Petr. 2:12). Believers must consider how they can be of service to one another by stimulating each other vigorously in the practice of good works. Other translations speak of 'how we may arouse (Gr. *paroxysmōs* spur, stir, stimulate, provoke, promote, encourage) one another (Gr. *allēlōn*) toward (Gr. *eis*, 'how to') love (*agapēs*, 'charity') and good works (Gr. *kalōn ergōn*, 'good deeds')'. The English Standard Version has: 'And let us consider how to stir up one another to love and good deeds'. The encouragement seems to be directed to the addressees of the letter, who are probably converted Jews and converted pagans. The author compares Jewish and Christian themes and figures. In the following verse, 10:25, people are admonished to continue visiting the communal services instead of falling back to old practices. The exhortation seems, however, mainly for internal Christian congregational use, and is not intended as a stimulus for reflection on interreligious interaction. Is there hermeneutical space for the interpretation of this text to do so?

From a Qur'anic perspective,¹⁶ several texts could provide a hermeneutical foundation for *diapraxis*. Here I will concentrate on a particular Qur'anic text, *sūrah* or chapter 5, verse 48. This particular *ayah*, *sūrat al-Mā'ida* (5) 48 can be regarded a *locus classicus* in the discourse on pluralism in the context of interreligious, specifically Christian–Muslim dialogue (cf. Brown 2004: 233). Some contemporary scholars of the Qur'an seem to acknowledge the purposeful *diapractical*, or 'orthopractical' interpreta-

tion of the Qur'an. Sohail H. Hashmi, a scholar of International Relations, has explained that 'the Qur'an is foremost a book of *practical* morality, containing broad outlines on how Muslims should relate to God, to each other, and to their fellow human beings' (Hashmi 2003: 96). According to him, the verse of *al-mā'ida* (5)48 represents 'a minimalist conception of religious cooperation, the least common denominator uniting the communities' (Ibid. 100). He has written a whole article on this particular verse, entitled *The Qur'an and Tolerance: An Interpretative Essay on Verse 5:48*. The context of this verse is the relationship of Muslims with the *ahl al-kitāb*, the people of the book, a term that refers mainly to Jews and Christians.

The particular *ayah*, *al-mā'ida* (5)48 contains two Arabic words¹⁷ that can be translated as a 'competitive race in virtues'. The text seems to express an acknowledgment of religious pluralism on the basis of common action for the good. In order to explore whether this is really the case, I will give the literal Arabic transliteration of the phrase, and a concise overview of the different translations given by distinct scholars. I will then discuss some relevant interpretations in the light of the present research of an envisioned diapraxis. The phrase under discussion is part of a larger *ayah*. The *ayah* in the translation reads as follows:

To thee We sent the Scripture in truth, confirming the scripture that came before it, and guarding it in safety: so, judge between them by what God hath revealed, and follow not their vain desires, diverging from the Truth that had come to thee. To each among you have We prescribed a Law (*shir'ah*) and an Open Way (*minhaj*). If Allah had so willed, he would have made you a single People, but (His plan is) to test you in what He had given you: so, strive as in a race (*istabiqū*) in all virtues (*al-khayrāt*). The goal of you all is to Allah; it is He that will show you the truth of the matters in which you dispute.

The Arabic of the last part of the verse, is:

فَأَسْتَبِقُوا الْخَيْرَاتِ إِلَى اللَّهِ مَرْجِعُكُمْ جَمِيعًا
فِيَنبَنُّكُمْ بِمَا كُنْتُمْ فِيهِ تَخْتَلِفُونَ

Outdo one another in the good things, turning, all of you, toward God your goal. He will make clear to you the matters about which you differed. (Ford 2012)

The interpretations of scholars almost always start with a translation of the first phrase under discussion, which in transliteration from Arabic reads, *fa'istabiqū al-khayrāt*. The verb *'istabiqū* is the imperative of the eighth form of the trilateral root *s-b-q*. It equals the sixth form of the same root, and means 'to try to get ahead of one another, seek to outdo one another, compete, vie, to try to beat one another'.¹⁸ The Arabic noun *al-khayrāt* stands for the plural of *khayrah*, good deed, good thing; in the plural form *khayrāt* means resources, treasures (e.g. of the earth, of a country), boons, blessings.

Most contemporary authors, both Muslim (Sūnni and Shī'a) and non-Muslim scholars of Islam, translate the phrase *'istabiqū al-khayrāt*, in terms of 'striving', 'racing', 'competing' and 'vying', in relation to 'good works', 'virtues' and, 'righteous deeds'.¹⁹ For almost all these contemporary scholars, the imperative *'istabiqū* conveys the sense of multiple, contemporaneous actors 'racing' and 'vying'. The simultaneous *reciprocal* interpretation of the verb, however, does not seem to represent a majority view in the exegetical tradition. The question arises whether in this particular *ayah* the Qur'an is addressing Muhammad and his companions only as many traditional exegetes argue, or whether all monotheists are being admonished here to join in racing at the same time as many contemporary exegetes seem to believe the phrase should be interpreted. Some Muslim scholars from different Shī'a and Sūnni backgrounds, and even non-Muslim scholars of Islam, have given their exegetical views on this metaphor of a competition from an interreligious perspective.

Ernest Hamilton (2007) wrote an article on this *ayah* 48, of *sūrat al-Mā'ida* under the title *Olympics of Good Work*. The subtitle of the article, *Exploration of a Qur'anic Metaphor*, shows its focus on the 'competitive race in virtues',²⁰ which is of particular interest for the present study. Inspired by Hamilton's approach,²¹ Farid Esack, the South African scholar of Islam, has dwelled at length at the interpretation of *al-Mā'ida* (5) 48 in his *Qur'an, Liberation & Pluralism, An Islamic perspective of Interreligious solidarity against suppression* (1998). Under the chapter heading 'The Qur'an & The Other, Pluralism & Justice', he presents his exegesis of the verse of the present study as an alternative to traditional *tafsīr*. What is the agenda that must be set for this religious cooperation? What are the aims and objectives of this competitive race for the common good? In the light of *ayat* Q. 5:48, Hamilton broaches the issue of human rights and even speaks of a human rights covenant, quoting Article 11 of the United Nations

International Convention on Economic, Social and Cultural Rights (16 December 1961).

The Qur'anic experience in interfaith dialogue, thus, points to the possibility of bringing together the various monotheistic communities through competition in 'good works'. This unifying action would, at the very least, minimize economic and social oppression not only of one individual by another, but also of one nation by another. It would enable, for instance, the Zoroastrian, Christian, Jewish, Muslim, and all other monotheistic communities to enter into a human rights 'covenant' to 'race with each other', using whatever resources God has given each of them (5:48), in making "the right of all human beings to adequate food, clothing and housing," education, and "continuous improvement of living conditions" a tangible reality even in monotheistic communities. (Hamilton 1991: 81)

Thus, according to Hamilton, the agenda of interfaith dialogue is unifying interreligious action by making rights to basic sustenance a reality. Academic intrareligious hermeneutic reflections such as on *ayat* Q. 5: 48 can be a first hermeneutical step towards unifying interreligious human rights action. According to Santos,

[A] dialogue between human rights and progressive theologies is possible and that it is a good path to develop truly intercultural and emancipatory practices. By mutually enriching themselves, human rights and political theologies may deepen the counterhegemonic potential of both. The result will be an ecology of conceptions of human dignity, some secular some religious, achieved through what I called elsewhere a diatopical hermeneutics (...), a practice-oriented exercise of transformative interpretation between the *topos* of human rights and the *topoi* of revelation and liberation of progressive political theologies. (Santos 2015: 64)

CONCLUSION

In the previous chapter, I discussed the threefold critique of Sen on human rights: (1) the legitimacy critique; (2) the coherence critique, and (3) the cultural critique. In the present chapter, I have used these critiques in order to analyse and to interpret Christian and Muslim scholarly perspectives on human rights, respectively. After doing so, I compared these views and placed them in the context of Christian–Muslim relations.

First, with regard to the critique of legitimacy, I discussed the distinct Christian and Muslim foundations of human rights. There appears to be sufficient overlap between Christian and Muslim scholarly concepts regarding the religious foundation of human rights. These are respectively, (1) *imago Dei* ('image or likeness' of God) as elaborated by Ruston, and *khilāfah* ('representation') by Mawdūdī and Abou El Fadl, respectively; (2) 'natural law' as elaborated by Ruston, and Sachedina's theological-ethical concept of *fitra* ('innate nature'); (3) scriptural hermeneutics in terms of founding human rights in creation 'human sacredness' (Perry), or 'ontology of the human' (Taylor), from a Christian perspective, and An-Na'im's 'Meccan universal standards', as a hermeneutical shift, based on the scholarly concept of reversed *naskh* (abrogation). A tentative agenda for a cross-cultural dialogue on human rights appears in the terms of (4) a 'public theology' (Stackhouse) and 'political theology' (Sachedina). There is thus reasonable shared ground in Muslim and Christian thinking about human rights.

Second, with regard to the coherence critique of human rights, Hans Küng has set the agenda by proposing a *Universal Declaration of Responsibilities* in the context of interfaith dialogue on rights balanced by responsibilities, duties, or obligations. Despite Tibi's critique of Küng's 'Eurocentric' inclination, a joint effort to mitigate rights talk by corresponding responsibilities, can be evaluated as a relevant contribution that religion can make to the project of 'universal universalism' (Baderin) of a human rights culture. Oh has argued that the role of duty in the discourse on human rights, 'provides a way in which religious and nonreligious thinkers might successfully converse with each other' (Oh 2007: 114). The Islamic ethical principle of *hisbah* ('commanding good and forbidding evil') as formulated in terms of duties or 'God's rights' by Mawdūdī and Qutb, could actually be used as a starting point for cross-cultural dialogue on human rights (Ibid.).

Third, I have discussed Sen's cultural critique, and have placed it in an interreligious perspective. It is inadequate to frame the religious contribution to the universalism versus cultural relativism debate simply in terms of the latter, as some non-religious authors have done (cf. Stammers 2009: 250-1). An-Na'im's terminology of *muwadanah* (reciprocity), Tibi's 'cross-cultural bridging', Küng's 'World Ethos', Sachedina's 'dialogical approach', or Baderin's *maslahah* and 'margin of appreciation' approach, all hint at concepts that have a 'dialogic merit' (Sen), while leav-

ing room for public discourse such as ‘public theological discourse’ (Stackhouse) on, or ‘political theology’ (Sachedina) of human rights as shared universal values in-the-making.

What does this theoretical analysis and interpretation of Muslim and Christian thought on human rights mean in practice? A more *diapRACTICAL* approach, in terms of concrete interreligious interaction, based on, for instance, scriptural hermeneutics of Hebrews 10:24, or an *Olympics of Good Work* in Q. 5:48, can offer a way out of the fatigue that currently characterises interreligious dialogue, toward ‘a practice-oriented exercise’ (Santos). In my quest to identify such a concrete human rights interaction between Muslims and Christians, I now turn to the local context of Eastleigh in Kenya’s capital city of Nairobi.

NOTES

¹ Afif has distinguished (1) the secretive method; (2) the apologetic method; (3) the defensive method; (4) the open (frank) method; (5) the method of deceit a) the UIDHR; b) the Cairo Declaration of Human Rights in Islam; (6) the ‘beating around the bush’ method; (7) the selective method; (8) the preaching (or ‘rhetorical’) method; and, (9) the comprehensive method.

² Other Treaties include the Arab Charter on Human Rights (1994); the Rome Declaration on Human Rights in Islam (2000), and the Arab Charter on Human Rights (2008) earlier mentioned.

³ Pamphlet first printed in 1976. The pamphlet is an English translation of an address by Abd’l A. Mawdūdī, 1975, Lahore, Pakistan.

⁴ *Khilāfah* is derived from the root *kh-l-f*, meaning ‘to succeed’. It can be used both as the successors of the Prophet in the religious-cum-political meaning of the four Rightly Guided Ones, *khulafā’ rashidūn*, referring to the four caliphs after the Prophet (Abu Bakr, ‘Uthmān, ‘Umar and Ali), as well as that it can refer to humankind in general. Every human can be referred to as a steward, caretaker of God on earth. In this last sense it equals the biblical notion of stewardship in ‘eco-theological’ terminology.

⁵ Ann E. Mayer (1995: 81) has criticised Muslim attempts to project modern developments that have emerged outside the Muslim world into the Islamic past, and has described it as *concordisme pieux*, or pious harmonisation. The same has happened in Christianity, where some have claimed that human rights can be found in the Bible. The German human rights scholar Bielefeldt has called this ‘simply imaginary’ claim, ‘dialectical re-appropriation’.

⁶ Flynn refers to the Malaysian sociologist and human rights activist Norani Othman, using the word *fitna* (civil strife, war, chaos), where I think he means *fitra*. Norani defines *fitra* as ‘a common human ontology’.

⁷ I have elaborated on this topic in my unpublished *Mekka, Medina en Mensenrechten; Over Hervorming van de Shari’a* (M.Th.), Amsterdam, 1992.

⁸ Cf. Anthony Chase in Chase and Amr 2006: 26-29, where he critiques An-Na’im’s approach as ‘essentialist’, and Abou El Fadl’s (2003: 313) critique on An-Na’im in terms of ‘original intent argument’.

⁹ <https://www.interactioncouncil.org/sites/default/files/udhr.pdf>.

¹⁰ According to René Cassin, who drafted the UDHR, this document refers to the Ten Commandments. ‘Although we can infer from these commandments that other human beings (ordinary men, parents, spouses, servants, property-owners, etc.) must be respected, there is no direct formulation in the Decalogue of a correlative prerogative, or of any subjective right. It is only ‘duty’ which the legislator of Israel stresses in man’s relationship to man’ (www.udhr.org/history/ten_comms.htm).

¹¹ Ibid. Cf. Kenyatta (1971: 82-6) discusses the issue of girl circumcision which is described quite extensively. To use this example of female genital mutilation (FGM) and its subsequent development, Nyambura Njoroge (an alumni of St Paul’s University, who presently works for the World Council of Churches) has stated in reference to Kenyatta’s stance vis-à-vis the missionaries that while the Kenyan government has made female circumcision illegal, 40% of the Kikuyu girls still undergo circumcision (Njoroge 2000: 56, cf. 153).

¹² Basam Tibi has distinguished between Islam and Islamism: ‘Islam as faith, cult, ethic and cultural system as well, and Islamism as an expression of religionized politics’ (2012: 18). ‘Islamist ideology undermines a cross-cultural communication in pursuit of peace’ (Ibid. 42). ‘The Islamists are not a “crazy gang” (Edward Said), but rather an organized powerful movement which is also strong in the European diaspora of Islam’ (Ibid. 121).

¹³ Sachedina’s (2009: 25) use of the term ‘political theology’ is a reference to Max Stackhouse’s ‘public theology’. Whereas in Stackhouse’s view theology can go public with regard to human rights issues, for Sachedina in Islam, ‘politics determines the action plan for the implementation of religious ideals in a just public order’.

¹⁴ Statements An-Na’im made during several interviews I had with him in Cairo in 1991/1992 for my Master’s thesis, *Mekka, Medina en Mensenrechten: Over Hervorming van de Shari’ah*.

¹⁵ Delacoura speaks of the ‘primacy of natural law’, which subordinates human rationality to it, and anchors natural law in a metaphysical context. She regards

natural law thinking as part of the collective heritage of humankind. The worth of the human being on which this natural law thinking is based is ‘a matter of faith, which we either have or do not’ (2007: 30, compare note 17). ‘Once we have divorced natural law and human rights from the Christian God, it can be seen that they can accommodate in many different religions, in particular Islam... It can even be accommodated in an agnostic world view’. She has therefore discussed the idea of *fitra* as elaborated by Sachedina (Dalacoura 2007: 59).

¹⁶ For an assessment of contemporary Christian perspectives on the Qur’ān as sacred scripture, see Ford 1993. Cf. Esack 2005: 1-12.

¹⁷ The exact same two Arabic words can also be found in *sūrat al-Baqarah* (2), 148.

¹⁸ Wright (2005: 42) has discussed the verb – be it in its dual-form – in more detail: ‘Out of the reflexive arises the *reciprocal* signification, which is common to this form,... *‘istabaqā*, the two tried to outrun one another’.

¹⁹ Yusuf Ali (1996: 164) has translated the phrase as: ‘*So strive as in a race in all virtues*’. Hashmi (2003: 100): ‘*Then strive together [as in a race] towards all that is good*’. Abou El-Fadl (1997: 248): ‘*So strive as in a race in all good virtues*’. M.M. Pickthall (1953: 101): ‘*So race one with another in good works*’. Hamilton (1991: 73) ‘*So race one with another in good works*’. Abdulaziz Sachedina (2009: 103): ‘*So compete with one another in good works*’. Esack (1998: 169): ‘*Compete with each other in righteous deeds*’. Rahman (2009: 166): ‘*So compete with each other in goodness*’. Sayyid H. Nasr (in Miroslav Volf, 2011: 303, note 17): ‘*Vie with each other in goodness*’. Mawdūdī (1989: 170): ‘*Vie, then, one with another in good works*’. Mahmoud M. Ayoub, 184: ‘*Vie therefore with one another in the performance of good works*’; Peter F. Ford (2012): ‘*So, outdo one another in good deeds*’. Muḥamad I. Surty (1995: 613): ‘*Hasten therefore to virtues*’. A.J. Arberry (1998: 109): ‘*So be you forward in good works*’.

²⁰ Ernest Hamilton has claimed that this is ‘the first attempt to explore the metaphor in a theological context. All major exegetes and commentators of the Qur’an, past and present (al-Tabarī, al-Zamakhsharī, al-Baydāwī, al-Suyūṭī, Ibn Kathīr, Rashīd Ridā, Sayyid Qutb, Abul Kalam Azad, Abul A’la Mawdūdī), seem to have overlooked the theological implications of this metaphor’ (Hamilton 2007: 72).

²¹ See Esack (1998: 178 note 19): ‘I am indebted to Hamilton (1991) for the insights into the significance for religious pluralism of the qur’anic metaphor of competition in righteousness’.

4

Mapping Eastleigh's Context

INTRODUCTION

A brief historical overview of Eastleigh will help the reader to understand its super-diverse context from a migration perspective. However, social-economic and political-cultural life in 'Little Mogadishu' is predominantly Muslim within the wider Christian majority context. The main focus of this chapter is therefore on the distinct Islamic religious phenomena that influence day-to-day life in Eastleigh, such as utterances of Islam in trade relations and other expressions of Muslim faith (*iman*) in the public space. At the end of the chapter, I will highlight the discursive *mihadhara* ('public debates') in the light of Christian–Muslim relations.

A SHORT HISTORY OF EASTLEIGH

Nairobi was founded in 1896 as a station of the East African Railway halfway between Mombasa on the Indian Ocean and Kisumu on Lake Victoria. South Asians, most of them of Indian background, started settling in the city. At that time Nairobi hardly had any local inhabitants. Kenyans were only allowed to live within the boundary of the city as bachelors and if they were formally employed by a white settler, or by one of the companies in the young city. Their families had to reside in villages beyond the city limits or elsewhere in the country. Indian and Arabic traders who dominated trade along the East African coast played an essential part in the construction of the train line (Herz 2010). The colonial government established residence zones, based on racial segregation. Together with the neighbouring estates of Pangani and Ngara, the Eastleigh part of Nairobi was allocated to the South Asians as their residential and commercial area.¹

What is now the eastern Nairobi suburb of Eastleigh was once open savannah where wild animals roamed, before Asians, Arabs, Somalis, and other Africans were pushed into it by European settlers (Micheni 2010: 26). In 1912 the colonial government officially established Eastleigh as a settlement for Asians and a number of wealthy Africans (Jacobsen 2011: 71). The first groups of Somalis came to Nairobi as escorts and guards for British Empire builders. A few others came to work on the Kenya–Uganda railway line. Under the protection of the colonial power, Somalis started their businesses alongside the Asians and Europeans in Nairobi, before they had to move to this bushy place around 1920, which by then was called *Kampi ya Somali* (Ki-Swahili for ‘Somali camp’). Eastleigh became the name of the township by official decree in 1921 (Carrier 2016: 39). The name Eastleigh was derived from a town of the same name in Hampshire (England) and related to the importance of the railways to Hampshire, as they were to the founding of Nairobi (Ibid.). In the inter-war years houses were built there for Indians and plots were assigned to Asians as well as Somalis. ‘Somalis were thus in Eastleigh even before it was Eastleigh’ (Ibid.). However, at the time a diverse Asian population outnumbered the Somalis and Eastleigh was considered to be ‘Little India’, which was reflected in the street names such as ‘Ganges Road’ and ‘Moghul Lane’ (Ibid. 43).

During the 1940s a law was passed which allowed Kenyan families to join their men, husbands and fathers in Nairobi. This coincided with the growing wealth of the trading community, enabling the Indians especially to move to the better neighbourhoods of Westlands and Parklands towards the west of the city. Nairobi’s east, and especially Eastleigh, thus again became an immigrants’ neighbourhood, this time for a population of local Kenyans moving into the colonial capital for the first time. With the political independence of Kenya in 1963, segregation of residential space along ethnic lines² was abolished and the population of Nairobi increased considerably. Along with Kenyans from villages and rural areas, growing numbers of Somali traders moved to Eastleigh and settled there.

In 1991 the Somali President Siad Barre was overthrown. Civil war broke out in this country in the Horn of Africa.³ Somalia disintegrated as it suffered from famine, lack of basic needs and the destruction of its infrastructure, and the country slid into the condition of a failed state. ‘Somali’s refugee exodus led to an estimated ‘missing million’ of its citi-

zens living outside its borders, many in countries such as the USA and UK, but most much closer to home' (Carrier 2016: 5). Within a short period of time, thousands of Somalis fled across the border into Kenya's North Eastern Province. They were placed in refugee camps near the Kenyan city of Dadaab and were reduced to a dismal existence in this disconnected part of the country. A famine in 2011 in the Dadaab camp and its environs triggered world-wide attention. Before 1991, the government of Kenya practised liberal and generous refugee policies, including full freedom of movement for refugees within the whole country. However, facing the large increase in the refugee flow it decided to implement a much more restricted system. Refugees had to reside in the camps and were not allowed to work. International human rights organisations such as Amnesty International have criticised the Kenyan government for failing to implement international legal standards in the Kakuma and Dadaab refugee camps ('Kenya's Somali refugee plan unlawful', 2012).

A considerable percentage of the people who fled from Somalia were previously well-to-do traders, mostly from the capital of Mogadishu. They came from an urban background and were not used to the rural way of life in the refugee camps. Having sold off their goods and real estate shortly before their escape to Kenya, they arrived in Nairobi with their wealth. As they were used to an urban way of life, and as the refugee camps lacked any possibility of trade, they moved further towards Nairobi's city centre. Supported by pre-existing contacts with Somalis who have been living in the Kenyan capital for a longer time, they often moved to the 'greener pastures' of Eastleigh. 'Indeed, there is an 'Eastleigh dream' whereby small scale retail enterprises can be transformed into business empires' (Carrier 2016: 135). However, Somali migrants without sufficient means or immigration papers also arrived in Eastleigh in search of security and a better life. Both poor and wealthy Somalis refugees have often used Eastleigh as a transit place. The former Dutch liberal parliamentarian of Somali descent Ayaan Hirsi Ali, for instance, lived in Eastleigh while she was in transition from Mogadishu to The Netherlands (Ali 2008: 62, 146), before ultimately moving to the USA.

The eagerness of Eastleigh residents to resettle somewhere else or to migrate onward has become a constant stress factor in a life between hope and despair. This phenomenon even has a name, *bunfis*, which means the longing or obsession to escape, a longing from which depres-

sion can even evolve (Jacobsen 2011: 191). Such are the contrasts that one finds in Eastleigh today. There are people who speak of the 'green pastures' of Eastleigh, who are actually living the 'Eastleigh dream' of a life in abundance, whereas others have strong feelings of alienation that lead to *buufis*. Thus, since the 1990s, for a third time,⁴ Eastleigh has become an immigrant quarter, this time mainly for wealthy Somalis as well as refugees who are using Eastleigh as a market place, residential area or transit zone. But apart from being a commercial hub and transit zone, Eastleigh has been more than a place for Somalis and Kenyan Somalis alone. At present 'Little Mogadishu' harbours people from a plethora of regional and international, cultural and religious backgrounds.

Eastleigh's 'super-diversity'

The name Little Mogadishu obscures Eastleigh's cosmopolitanism and is therefore not entirely helpful. Steven Vertovec (2007) introduced the concept of 'super-diversity' to capture the impact of different waves of migration on megacities such as London. Eastleigh is not as mono-ethnic as its nickname Little Mogadishu suggests. Due to the waves of migration, that have just been described, Eastleigh also has a 'super-diverse' population. Its ethnoscape, although not quite as extensive as that of cities such as London, corresponds to much of Vertovec's terminology.

First of all, the Somalis and the Kenyan Somalis can be subdivided into several clans, sub-clans and clan families. The Somalis are divided into 6 clans: Darood, Hawiye, Isaaq, Dir, Digil and Rahanweyn. Hawiye, the main group in Eastleigh originally came from the area surrounding Mogadishu (Griffiths 2002: 32). The clans in turn are divided into sub-clans and clan families. Apart from people of Somali descent, Eastleigh is home to people of many different ethnic backgrounds, including Kikuyu, Kamba, Swahili, Arab and Meru. Refugees and traders from East Africa, especially the Oromo from Ethiopia, come there to seek business opportunities. Kikuyu are owners of most of the residential houses in the estate. Meru are the growers and traders of the stimulant drug *khat* or *miraa* that is particularly popular in Eastleigh. The khat trade is part of a huge transnational network of which Eastleigh is a prominent hub.

Ethiopians are the second largest nationality in Eastleigh. Thousands of refugees and asylum seekers of Ethiopian origin have recently come to Nairobi. They belong to various ethnic groups, primarily Oromo and Amhara, and a small number of Anuak. The great majority of Oromos

and Amhara live in Eastleigh. Eastleigh has also attracted refugees from Eritrea and Sudan, and other countries in the Horn of Africa such as Djibouti, as well as from Central and Southern Africa. Somalis and Ethiopians tend to concentrate in Eastleigh, while South Sudanese residents can be found scattered across several locations, including Eastleigh.

Since Somalis are predominantly Muslim, Little Mogadishu can be associated with a monolithic religious outlook as well as a socio-ethical one. Indeed, Islam structures much of social and economic life in Eastleigh. Names such as Mecca Plaza and Medina Mall are testimony to a strong Islamic influence. The business community considers Islamic identity to be a sign of trustworthiness in a society divided by clan identity like back in Somalia. '[E]mphasising Islam is also a reaction against the global image of Somalia in the stateless era, as a place of conflict and distrust built on clan divisions' (Carrier 2016: 182). Although Islam is an unifying worldview for many people in Eastleigh, it can also be a source of diversity. Despite the fact that almost all Somalis consider themselves to belong to the Sunni branch of Islam, there are religious distinctions between Salafi and Wahhabi on one side of the spectrum and Sufi (*taṣawwūf*) tendencies on the other. The former branch of Islam represents conservative paths and traditions, the latter devotional paths and traditions. Distinct features of both groups will be described in greater detail below.

But Islam is not the only religion represented in Eastleigh. Kenya has been called 'a haven for missions'. Most of the mainline Christian denominations are active in contemporary Kenya (Marshall 2017: 36). Paul Gifford argues that the Roman Catholic Church of Nairobi 'probably has more religious houses than any city except Rome' (Paul Gifford quoted in Marshall 2017: 36). Christian organisations and churches are scattered far and wide over Eastleigh as well, and we will encounter a number of them below. Meru and Kikuyu Kenyans are predominantly Christian as are people coming from countries such as Ethiopia, South Sudan and the Great Lakes area. In the 1930s, Goan Christians from India erected St Theresa Catholic Church, to be described in more detail in Chapter 6.

Though the name Little Mogadishu seems misleading and even dangerous, as it denies Eastleigh's super-diverse ethnoscape, in some ways it is an appropriate name, since economically and socially Eastleigh does function as 'a Little Mogadishu', subsuming much activity that would

previously have been centred on Mogadishu itself. According to Carrier (2016: 182), 'Eastleigh, with its diverse population and links to vast trade networks, has much in common with pre-war Mogadishu' (Ibid. 248-9). The name can thus offer a vision of what it wishes to become once more, referring to Mogadishu's proud history and hopeful future (Ibid.). As I recall a phone call from Mogadishu of one of my Somali contacts in Eastleigh, inviting me from Kenya to Somalia's capital city, saying: 'Come to Mogadishu, its much safer here than in Eastleigh'.

EASTLEIGH'S SOCIO-ECONOMIC AND POLITICAL CONTEXT

In the 1990s, Somali traders came to Eastleigh with the aim of settling their administrative affairs, such as identity papers, in order to quickly move on to places such as London, The Netherlands, Dubai or the United States. Some refugees came to Nairobi with considerable amounts of money and they often had to linger for months before obtaining their documents. They started spending their time doing business and trading goods from their hotel rooms. Hotels, guesthouses and other kinds of lodgings were constructed where they passed the time waiting to receive their exit visas, while doing business from 'under their beds'. One of these guesthouses was 'Garissa Lodge', named after a Kenyan town in the east of the country inhabited by Kenyan Somalis.⁵ Garissa Lodge was a two-storey building on First Avenue built by Indians some thirty years earlier. In the early 1990s it was owned by a Swahili man. Garissa Lodge slowly transformed itself from guesthouse into a trading place. It has currently been completely transformed into a shopping mall. As a trading centre in Eastleigh it was quickly replicated by other malls constructed in many variations along Eastleigh's main road. Garissa Lodge has now become the successful model of Eastleigh's transformation into a commercial epicentre of numerous enterprises and shops, 'mallings' the area.

Eastleigh is now one of the biggest business hubs in East Africa, with over fourth shopping malls hosting more than 6,000 shops, in addition to hundreds of small businesses of hawkers. Dozens of trading women⁶ and men compete for customers who come from all corners of the country and from the neighbouring countries. In the contested space in the estate, 95% of the residential houses are commercial and only 5% private ('Eastleigh Business District Association' 2010: 27). Eastleigh is well-connected with the rest of the business world, in particular with

China and the Gulf region. Informal services of *hawala* (money remittance), facilitate the rapid transfer of cash to the Somali diaspora throughout the world. Hawala is said to be based on trust (*amanah*) 'whereby one agent could accept money for a client in one location and trust that another agent would release the remitted money in another location, the remittee often being identified through their place in the lineage structure' (Carrier 2016: 174). One of my contacts, Mr A. from Eighth Street mosque opposite the CCMRE centre, explained to me how *hawala* works in practice. After an international phone call with his daughter in The Netherlands, he would be able to withdraw considerable amounts of money from his bank account in Eastleigh within only a few minutes' time.

In addition to facilitating this international business network, Eastleigh has also been reported to have become a link with Somali-based militant groups. According to investigative journalist Samora, for instance, '[b]usinessmen, foreign donors, fundraisers and other sources supporting the insurgents channel funds into this sprawling neighbourhood through the discreetly effective hawala' (M. Samora in Micheni 2010: 27). Some commentators maintain that the area is being used as a money-laundering base. Although it has never been proven, they have linked the recent boom in the construction of buildings to piracy on the Indian Ocean. This closed economic system of *hawala* seems to frustrate some Kenyans I have spoken to, who say that ordinary Eastleigh residents cannot compete with the Somalis in paying the rent, let alone in buying houses in Eastleigh. Social scientist Pavanello has described this situation as follows:

Many landlords in Eastleigh are happy to rent accommodation without a regular contract, as long as three months' rent is paid in advance. Refugees who do not have legal documents often ask other refugees to sign the tenancy agreement on their behalf. This usually generates a mark-up on rent as refugees with no legal documents will usually be asked to pay a higher price than agreed on the tenancy agreement. This seems to have become a lucrative business, especially among Somali refugee communities in Eastleigh. Somali refugees with legal papers often rent accommodation from Kenyan landlords and then sub-let it to paperless refugees. Kenyan landlords, often of Kikuyu origin, are aware of these transactions but do not question the sub-letting as they prefer to deal with reliable intermediaries.

Somali sub-letters also prefer to deal with Somali middlemen rather than Kenyan landlords directly. (Pavanello et al. 2010: 24)

The renting situation illustrates the plight of many Somali and other mainly urban refugees. In 2010 and 2011, I met some Oromo and Somali women groups in Eastleigh who expressed distress at their situation as sub-letters. Moreover, these women – most of whom do not have official papers – feel harassed on a daily basis by the Kenyan police. According to them bribery is a common way of surviving in Eastleigh. Schools, religious centres and mosques are safe havens for them. Since these privately-owned institutions are managed by Somalis they provide respite from the police and allow the women to experience relative autonomy there.

The context of marginality of groups like these is illustrated by the mud and filth. The cocktail of sewage, garbage and dirt is ubiquitous. Outbreaks of cholera and dysentery are never far off. Homeless people and drug addicts live amidst the garbage. A number of large trash piles are said to be used as a ‘dumpsite for abandoned new-borns and aborted foetuses’ (Jacobsen 2011: 80). Eastleigh has become a place where the basic human dignity of certain fragments of residents seems to be at risk amid the private wealth of international traders. There is a big divide between the infrastructural decay of Eastleigh and the cleanliness inside buildings, shopping malls, offices, banks, hotels and the houses of wealthy traders. Eastleigh has thus become ‘a place of decayed streets as well as mushrooming malls’ (Carrier 2016: 97). As an Eastleigh resident was recorded as saying: ‘Look up it’s Dubai; look down it’s dirt’ (Ibid. 47).

Inside the malls, in addition to all kinds of organisations, there are also well-kept mosques. Parents in the Somali diaspora of Europe and North America often send their sons and daughters to Eastleigh’s mosques and to the religious schools (*madrassahs*) surrounding the malls. The parents consider Eastleigh a ‘home’ for their children where they can learn about their culture and religion. In this way the young overseas Somalis become culturally and religiously rehabilitated. There is even a Somali word for this cultural and religious rehabilitation: *dhaqan celin*. At the CCMRE, for instance, I met a young man from the American Somali Diaspora who had been sent by his parents for *dhaqan celin* in a Somali-Islamic cultural context. I found him waiting for lessons in *aqida* (Islamic creed), dressed in a basketball outfit and complaining about the odd

smells of the estate. This is why, despite environmental issues such as open sewage, Jacobsen can still map Eastleigh as 'a quintessential moral and therefore clean place' (Jacobsen 2011: 75), even 'a moral Mecca in an immoral Nairobi' (Ibid. 86) of the Somali diaspora.

With regard to the status of Eastleigh's amenities the Kenyan government seems to pay little attention and even appears to be apathetic. Residents and traders of Eastleigh have complained that the infrastructure has been long neglected, despite the fact that the estate generates huge revenues for the local authorities. This income-generating aspect might explain why the municipal services' electricity supply to Eastleigh is well catered for, as we learnt from the mapping exercise done in 2012-13. Providing electricity is a cash cow, whereas building decent roads and other infrastructural services such as proper sewage and drinking line systems are apparently not worth the local authorities' investment. Yet, it is not only the authorities who bear responsibility for the state of Eastleigh's environmental affairs. Thus, the litter strewn about the estate is not only the result of a lack of attention of the government alone. Some of Eastleigh's residents seem so estranged from the estate that they do not care for its public space. The illness of *buufis* also effects the environment of Little Mogadishu. At the same time some infrastructural changes seem to be underway. With the aid of Eastleigh's business association, the Kenyan authorities have recently shown initial positive state engagement for the first time by renovating Eastleigh's First and Second Avenues which 'now no longer resemble rivers or bomb craters' (Carrier 2016: 239).

However, despite some positive developments, Eastleigh continues to be permanently under suspicion. Security officers are still involved in fighting the terrorist group of *al-shabāb* that has become active in Eastleigh, especially after the alleged defeat of the group in Kismayu, Somalia, in October 2012. A wave of terror attacks followed including that on the Westgate Mall in September 2013 and Garissa University College in April 2015. Assistant Minister of Internal Security, Orwa Ojode, linked these attacks to Eastleigh by describing *al-shabāb* 'as like a big animal with the tail in Somalia and the head of the animal in Eastleigh' (Ibid. 227).

In many cases the Kenyan security forces can only react to terrorist activities. On 7 December 2012, Kenyan-Somali MP Yusuf Hassan was attacked in Eastleigh, as he left the Al-Amin Mosque, but he survived the blast ('MP injured', 2012, Cf. Carrier 2016: 228, 229). Eastleigh falls un-

der the Nairobi county of Kamukunji constituency and Yusuf Hassan is the current MP for Kamukunji. When I contacted Hassan's personal adviser, Sheikh Abdul Nasser, I found Nasser in distress, as he answered my phone call from Aga Khan Hospital. Two weeks before this event, Sheikh Nasser had introduced me to Hassan, who then spontaneously promised to visit our Centre for Christian–Muslim Relations in Eastleigh where we try to bridge religious divides in Eastleigh (Carrier 2016: 133). Amid socio-political and economic opportunities and challenges, the people of Eastleigh continue to search for constructive religious practices.

THE ISLAMIC ECONOMIC AND SPIRITUAL CONTEXT OF EASTLEIGH

Ellis and Ter Haar have defined religion in sub-Saharan Africa 'as a belief in the existence of an invisible world, distinct but not separate from the visible one, that is home to spiritual beings with effective powers over the material world' (Ellis & Ter Haar 2007: 387). In Eastleigh, material and religious worlds do indeed appear to correlate. In everyday practices, religion helps with what the Egyptian anthropologist Saba Mahmood (2005) has called the performance of ethical selfhood. The ethical performance of both Christians and Muslims is key to the current study. I referred already to the super-diversity of Eastleigh, also in religious terms. The present chapter about Little Mogadishu will focus on the practical, ethical side of Islam in particular.

Religion in Eastleigh is not something that is exclusively transcendental and immaterial. In terms of *praxis* I am particularly interested in how religion is lived out in the material and spiritual realms. Neil Carrier writes: 'In Eastleigh and the networks that run through it, religion can clearly be a resource, and Islam offers much help in navigating the economic landscape (...), however, Islam's role as such a resource no doubt strengthens further the faith of those whom it benefits. Like trust itself, religion grows stronger through practice' (Carrier 2016: 183, 184). How can we trace 'lived religion' in material and spiritual phenomena in the *praxis* of Eastleigh? Carrier has shown from an anthropological viewpoint how Islam runs through the economic veins of the estate. Above I discussed the trust-based economy without legal documents (*hawala*) that exists there. I also mentioned the role of the stimulant substance *khat*. Religious feelings about the *khat* trade can be regarded as 'a barometer of religious change in Eastleigh' (Ibid. 179). *Khat* has recently been deemed

harām by religious authorities. The hardened attitude toward the substance 'owes much to the increased influence of Salafi Islam' (Ibid.). The ban on the substance can be explained on the basis of religious principles. Also external measures make it harder to buy it. British and Dutch authorities, for instance, have recently forbidden the international transport of *khat* via their airports.

In an economic hotspot such as Eastleigh the prohibition of interest (*riba*) is another economic and religious issue. Charging *riba* (interest or usury) is forbidden (*harām*) in Islamic law since it is seen as money earned by exploiting one another. Interest-free (*bilā riba*) or *shari'ah*-compliant loans have recently been offered by a number of banks in Eastleigh, such as Gulf Bank and Barclays. Islamic scholars in Eastleigh have given their backing to these financial products (Ibid. 93).

Islamic moral standards in the estate also apply to gold transactions. One of the standard *hadith* collections, *Sahih Muslim*, stipulates that no usury may be applied to gold-to-gold trading, but transactions have to be 'hand to hand' (Ibid. 204). For Somali traders this verse means that gold transaction must be completed in person and at one particular point in time, and not on credit with interest. Gold transactions often occur through the Islamic practice of paying a bride price (*mahr*). At weddings, Muslim women receive this gift from their husband in gold jewellery to be used in cases of divorce or death of the husband. For women, gold therefore provides an independent resource in times of distress. 'Thus gold is another commodity bursting with cultural and social meaning, forming a crucial store of value among women's economic networks: it demonstrates strongly the interpenetration of social, cultural, moral and religious dimensions in the economic life of Eastleigh' (Ibid.). Religion in Eastleigh is thus exploited also as a resource for material purposes. However, besides in the material field of economics, Islam features in more spiritual realms in the first place.

In Islam the general term for its belief system is *īmān*. Jacobsen has defined *īmān* in the context of Eastleigh as a 'sort of well or reservoir often imagined as residing in a person's body, which requires constant attention' (Jacobsen 2011: 103). Devotional ethical practices are considered to be the criteria that determine whether one is able to keep one's faith, or *īmān*.⁷ A person shows his or her piety and moral self-expression through action and activity, rather than through words alone. For instance, when a sick person sees a sheikh-doctor for treatment, this is in

itself an act of faith-building. The ‘reservoir’ of *īmān*, filled by piety-through-practice, will protect the believer from an evil *jinn*, *qarīn*, or spirit. Devotional Islamic practices (*ibadāt*) such as prayer (*ṣalāt*) and, charity (obligatory *ṣakāt*, and voluntary *sadaqāt*) are considered to be the duties of mankind and, thus, the rights that God has over His servants (*‘abd*, pl. *‘ibād*). For many Kenyan Somalis, the mystical or *Sufī* devotional act of *dhikr* is also part of *ibadāt*. The Sufi⁸ quest is to experience God through the ritual of the remembrance of God, *dhikr*. The function of *dhikr* can be fulfilled, for instance, by the recitation of his 99 names represented by the 99 beads of the Islamic equivalent of the Catholic rosary, *tasbīh*. Sheikh Merabaksh Abdulaziz, who introduced us to the Sufi shade of Islam in Eastleigh, always wears these beads around his neck. He brought us to several *dhikr* events in Eastleigh in early 2013, on the occasion of the Maulidi festival, which celebrates the month of the Prophet’s birth, in ‘the Year of the Elephant’ (570 CE).

One of the most striking things we observed while attending Sufi *dhikr*s is the spiritual zeal that all participants demonstrate. We witnessed young people reciting with enthusiasm prophetic poems (*nāṭs*) while being sprinkled by various scents of perfume and incense. The music by the *dhov* (a drum-like tambourine) in combination with the many different meditative movements and gestures was intriguing. We never left the site without having an extensive meal, again with special smells and tastes. The distinct Sufi rituals that appeal to the senses – rhythmic music and meditative songs, scents of perfume and incense, coloured banners, tasteful meals – stand in shrill contrast to the odours and smell that fill the streets of Eastleigh. The huge discrepancy between the cleanliness and well-organised spiritual gathering inside, and the chaotic, smelly streets, is perhaps one of the most striking phenomena of the estate.

The mystical tradition of Sufism (*taṣawwuf*) has always been part and parcel of Somali’s predominantly Sunni⁹ Islamic religious, cultural and even political structure. Ioan Lewis has described how Sufi sheikhs who are considered to possess divine grace or blessing (*baraka*) have long been associated with this religious and political structure. The Sufi sheikhs have a personal chain of genealogies (*isnād*) that can be traced back to the lineage (*silsila*) of the Prophet Muhammad’s clan of Quraysh. Through these connections, Somalis community leaders can claim direct descent from the Prophet. The lineage (*silsila*) of the Prophet Muhammad provide the sheikhs with their socio-political status in wider Somali

society (Lewis 1998: 2). 'Somalis consider themselves as children of the Prophet' (Ibid. 6-7).

In Eastleigh the Qadiriyya *tariqa* is the most predominant of the distinct Sufi orders or brotherhoods (*tariqa*, pl. *turiq*). The *dhikrs* we attended from early 2013 onwards were organised by the Qadiriyya brotherhood. In Eastleigh, some Somalis refer to Sufi as people who practice devotional practices such as *dhikr*, as if they were a separate, autonomous group of Muslims. But when we asked our hosts at the *dhikrs* about their religious affiliation most Sufi-Muslims identified themselves as an integral part Sunni Islam. The mosque in Tenth Street is known for its Sufi background. When I asked the *imām* about possible denominations within the Muslim community in Eastleigh, he seemed to become annoyed, and underscored that there is only one Islam. However, over the years the internal Muslim divide has become more obvious. In the contemporary Somali context of Eastleigh, the Sufi tradition that is so predominant in Somalia, appears to be currently under pressure.

From its early history, the Sufi movement has experienced difficulties with Islamic orthodoxy. At the beginning of the movement in 922 AD, Mansūr al-Hallāj, a Sufi saint, was executed by impalement for claiming that he was the incarnation of divine presence by saying *anā al-haq*, 'I am the truth', referring to one of God's 99 attributes and thus allegedly equating himself to the Divine unity (*tawhid*). Thousand years later, in 1922, the French Catholic scientist Louis Massignon wrote his *La passion d'al-Hosayn-ibn-Mansour Al-Hallaj, martyr mystique de l'islam*, indicating the spiritual depth of Islam (Poorthuis & Saleminck 2011: 158, Van Deursen-Vreeburg 2015: 10-35). Sufism, however, has increasingly come under suspicion in Eastleigh as well. David Shenk, who spent much time in Eastleigh, has observed that,

[t]he same tensions infected Somalia when in 1909 at Biyolay a Sufi Saint, Sheikh Uways, was martyred with 26 of his disciples. The Sufi tension with orthodoxy is rooted within a paradox within the Qur'an between an insistence that there can be no fellowship between God and humankind (*tanẓih*) (Qur'an: Ikhlas: 112) and the doctrine of friendship with God (*awliya*) (Qur'an: al-Maida: 5:53-54; Jonah: 10:63).

Sufism is not a side show within Somali Islam. All Somalis were in some way formed by Sufi spirituality. I learned that the repeated references to Allah in conversation are rooted in the Sufi commitment to remembering God as commanded in the Qur'an. "Ye who believe! Let not your

riches divert you from the remembrance of God. If any act thus, the loss is their own” (Qur’an: Munafiqun: 43:9). This means that every area of life should be permeated with the remembrance of God! (...) Sufi piety permeates not only Somali Islam, but much of African Islam as well”.¹⁰

Lewis too distinguishes between the mystical and more traditional trends in Islam that cause frictions in local contexts. According to him, ‘perhaps the most fundamental tension in the past and today, in Somali Islam, is that between mystical mediated views of man’s relation to the Prophet and to God, and more ritualistic interpretations which deny the efficacy and propriety of such human mediation with the divine’ (Lewis 1998: xiii). Lewis observed this tendency in the 1990s.

In his recent study of Eastleigh, Carrier (2016: 103) has observed new religious codes. ‘Islam among Somali has generally been moderate, a ‘veil lightly worn’. At the same time, however, the increasing influence of Salafism and Wahhabism¹¹ on the residents of Eastleigh is becoming visible. Salafi imams have become highly influential in the estate through Eastleigh’s trade links with the Gulf regions. Salafi influence has caused social change (Carrier 2016: 103). In Eastleigh Salafi and Wahhabi are referred to as one group although there are some slight differences between them.

In Eastleigh, the Wahnabi movement is regularly referred to as Aqwāni. This is possibly an abbreviation of *ikhwan al-muslimin*,¹² the Muslim Brotherhood. What these Salafi and Wahhabi movements have in common is their purist interpretations of Islamic law, theology and socioeconomic politics, and their reluctance to acknowledge Sufism (*taṣawwuf*) as part of ‘pure’ Islam. Certain Sufi practices such as the exorcism of *jinn*s and the veneration of saints, are even considered ‘polytheistic’ (*shirk*), implying that people are invoking spiritual beings other than God.¹³ On the one side, these intrareligious discourses between these salafi and Sufi strands of Islam continue to take place. On the other side, Muslim–Christian interreligious encounters and polemics also occur in the streets of Eastleigh.

OPEN-AIR PREACHING

A striking religious phenomenon that is immediately obvious to visitors to Eastleigh is that of *mihadhara*, or public preaching by Muslims. According to Hassan Mwakimako, ‘[p]ublic meetings to discuss and to hear

about different religious topics are a common feature in Kenya. Amongst Muslims such gatherings, (*mihadhara*) are usually held in neighbourhoods or other public places. During the *mihadhara*, itinerant Muslim preachers mount huge public address systems and engage fellow Muslims or adherents of other religions in a 'debate', 'discussion', dialogue' or 'competition on religious topics' (Mwakimako 2007: 22). During the *mihadhara*, which take place at different times of the day, Muslim preachers attract the attention of several hundreds of local people. Two or three street preachers, a number of Christian interlocutors and a Muslim reader of the sacred texts take the microphone in turns. In this study I focus on the phenomenon from an interreligious angle. The methods of these interreligious encounters are discursive and based on Bible and Qur'an. The open-air gatherings show 'some parallels with "scriptural reasoning" (i.e., theological exchanges on the basis religious texts, WJ) as practised in Western Europe' (Wijsen 2013: 176). In the public squares of Kenya 'it is a common sight to find itinerant Muslim and Pentecostal preachers moving from place to place competing with each other through preaching at open-air revival meetings' (Wandera, unpublished PhD thesis).¹⁴ In Eastleigh, *mihadhara* are considered primarily as 'the Islamic method of outreach (*da'wah*)' (John A. Chesworth in Mutei 2012: x) and can be seen as a reaction to the "miracle crusades" of Pentecostal churches in the wider Kenyan context. From 2012 to 2014, I attended and participated in several of these *mihadhara* in Eastleigh organised by Muslims (interview Willem Jansen in Mulder 2011).

Mihadhara is the plural of the Ki-Swahili word *Mbadhara*, probably related to the Arabic verb with the root letters *bā-da-ra*, meaning 'to be present' or 'to present a lecture'. The Ki-Swahili verb *kubudhuria*, meaning 'to attend', and the noun *mabudhurio* 'attendance', are both derived from this Arabic verb. '*Mbadhara* has gained a wider, popular usage for public meetings; this includes meetings for community, political and religious purposes. Any meeting which involves these general public can be called *Mbadhara*' (Chesworth in Mutei 2012: 30). In a country-wide survey conducted in 2006 including interviews with more than 1300 people, Mwakimako found Muslims in Kenya to be particularly positive about the phenomenon of *mihadhara*. About 66% of Muslims indicated that it was a habit for them 'always' to attend *mihadhara*. Those who occasionally took time to attend *mihadhara* comprised 28%, while a small percent of the survey, 6%, 'never' attend public religious meetings (Mwakimako

2007: 22-3). According to the same survey, *mihadhara* are particularly frequently in the North Eastern Province of Kenya, especially in the city of Garissa. Garissa is seen as a Somali stronghold between Eastleigh and Mogadishu. Apparently, there had been only very few *mihadhara* since the recent attacks on churches and church personnel from 2012. However, I found huge crowds attending the meetings in Eastleigh (Ibid. 23).

The following questions regarding the phenomenon of *mihadhara* will be discussed. What is known about their historical background?¹⁵ What is the set-up of such gatherings and what are the issues discussed? And finally, what impact do these ‘open-air’ meetings have on Muslim–Christian relations?

Mihadhara, a short history

The current ‘open-air outreach’ in the public sphere of Eastleigh can be traced back to East Africa in the nineteenth century. In 1844 the Church Missionary Society (CMS) started its missionary work in the coastal area of Muslim-dominated Mombasa. Here the missionaries used open-air meetings to reach the masses. From the 1920s onwards, these meetings were also held in Nakuru and Nairobi (Chesworth 2006: 159-86). As missionary R. Pittway related: ‘Nairobi 1935: *The Open Air Meetings* have been well attended and many Mohammadens [*sic.*] quietly listen to the Gospel on these occasions; and from remarks heard it is clear that they think about, and discuss the messages given’ (Pittway quoted by Chesworth 2006: 162).

Open-air gatherings as a means for Christian outreach also occurred in the period between the Second World War and Kenya’s independence in 1963. Mainly American speakers, among whom Billy Graham, conducted ‘sensational rallies in Nairobi and Kisumu’ (Shorter & Njiru in Chesworth 2006: 163). Joseph Galgalo of St Paul’s University described the beginning of the Pentecostal movement in Kenya through ‘a series of crusades’ and ‘healing rallies’ that ‘gave impetus for open air preaching, which has since become the most popular method of evangelism in Kenya’ (Galgalo 2003: 30). The Pentecostal terminology of ‘crusades’, however, appears to be problematic in the field of Christian–Muslim relations, as they refer to the Christian atrocities perpetrated in the Middle East between 1095 and 1291. Yet from the 1980s onward, ‘crusades’ were held in the public space in Nairobi and elsewhere. One of the staunchest proponents of this method of open-air preaching has been

the German Reinhard Bonnke, the leader of 'Christ for all Nations', who used to visit Kenya regularly. Bonnke's approach to non-Christian religions does not leave much room for interreligious dialogue. In the words of Paul Gifford, Bonnke uses a 'powerful' militant language. 'To Muslims, Bonnke's aim is the elimination of every mosque from Africa in the shortest possible time. This elimination is to be achieved through cultural annihilation' (Gifford quoted by Chesworth 2006: 164). According to Wijzen, it can be argued that in East Africa 'radical Muslim preaching was a reaction against Christian preaching by evangelists such as Reinhard Bonnke' (Wijzen 2013: 114).

Ahmad H. Deedat (1918-2005), a Muslim of Indian descent who later settled in South Africa, introduced open-air preaching in East Africa. As a child Deedat was annoyed by the door-to-door Christian campaigns in India. 'Determined to make Muslims aware of their right to defend themselves and to arm them with enough knowledge about the Qur'an and the Bible, he started lecturing' (Ibid. 175). Over the course of his life Deedat produced a number of booklets 'to discredit Christianity while promoting Islam as the true religion' (Mutei 2013: 25), including *Is the Bible God's word?*,¹⁶ *Crucifixion or Crucifiction*, *Christ in Islam* and *Al-Qur'an the ultimate miracle*. According to David Westerlund, pamphlets written by Deedat and others are reprinted, sponsored by oil money from countries such as Saudi Arabia, and distributed across the continent in large quantities (Westerlund 2004: 130-3). Some of Deedat's works have been translated into Ki-Swahili, such as *Mtume Muhammad katiba Biblia* (The Apostle Muhammad in the Bible) in 1965 and *Je! Yesu Alisulubwa?* (Was Jesus Crucified?). Some of these pamphlets have been distributed by the prestigious Jamia Mosque in Nairobi. Deedat influenced East African preachers through these pamphlets, DVDs and CDs with his debates and talks which can still be found throughout Eastleigh, as well as printed materials. Events where such recordings are shown 'often end in chaos and sometimes stone-throwing – the beginning of hatred between the two communities' (Mbillah 2004: 69).

The first *mihadhara* in Kenya was exported from Tanzania shortly after 1985, by two Tanzanian preachers. In 1987 the preachers, Musa Fundi Ngariba and Muhammed Ali Kawemba were banned from Kenya on 'security grounds' after their allegedly inflammatory preaching against Christians (Mutei 2012: 34). Both Ngariba and Kawemba were involved in a series of *mihadhara* in Kenya and in 1978 they published a book in

English and Ki-Swahili entitled *Islam and the Bible*. With their apologetic approach against Christianity, they followed in Deedat's footprints (Chesworth 2006: 173). Later, Deedat and his followers from Tanzania continued to promote open-air lecturing under the title of 'Comparative Religion' to parts of Kenya such as Eastleigh.

Describing the phenomenon in Eastleigh

The main language used during the open-air preaching is Ki-Swahili, along with sporadic Arabic and English. An Arabic word that is often used by the preachers after an argument is *takebir* (infinitive verb lit. 'to make great'), to which the Muslim audience responds: '*allāhu akbar*' (lit. 'God is great(er)').¹⁷ Ki-Swahili is a Bantu language that has strong historical linguistic links with the Arabic language. The name of the Ki-Swahili language is actually derived from the Arabic word for coastal area, *sabawil*. Ki-Swahili in Eastleigh is a useful tool in order to reach Christian and Muslim audiences. For instance, the Qur'anic expressions for *kitāb* (book), *ẓubūr* (psalm) and *injil* (gospel) are closely linked to the Ki-Swahili words *kitabu*, *ḡaburi* and *injili*, respectively. Another Ki-Swahili word the preachers often use (Mutei 2012: note 67, 45) is *sujudu* (to bow down in worship), which is closely related to the Qur'anic Arabic word of *sajada* (to prostrate).

Compared to the traditional *jum'a khutbah*, 'Friday sermon', the setting of a *mihadhara* 'sermon' reflects a new form of Islamic outreach or *dā'wah* (literally 'invitation' or 'call'). The way in which the tables and benches are arranged betrays the *mihadhara*'s competitive set-up. On the one side, reader sits behind a table with copies of the Bible and the Qur'an on it. Next to the reader are one or more preachers, mostly standing. A moderator often sits between them, who begins and ends the preaching and the discussion sessions. In case of tension, he can call the meeting to order, for instance by asking the reader to stick to the theme, or to continue with another Biblical or Qur'anic text. Sometimes special guests such as influential local businessmen or imams are invited, who are also behind the table. On the other side, some eight metres opposite the Muslim actors – reader, preachers, moderator and occasional guests – a number of Christians sit on a bench, often only a small group. They are invited by the preachers on an individual basis. On a number of occasions, I saw the Christian librarian of the Mennonite Eastleigh Fellowship Centre there, and an employee of the evangelical organisation, Life

Challenge Africa. In quite a number of cases I also encountered representatives of the Seventh Day Adventist Church, who seemed to be particularly active as Christian interlocutors at *mihadhara* open-air meetings. As I found out, they are specially 'trained' for these challenging occasions.

In 2012 and 2013, I attended together with a group of students and colleagues an annual *mihadhara* organised by the Eastleigh *Eight Street Da'wah Group* (see Ibrahim Issack in Peter et al. 2013: 35) under the title of 'dialogue' in Uhuru Park, in the city centre of Nairobi. More than a thousand people approximately attended the event, men separated from women and sitting in a stadium-like setting. We were struck by the competitive attitude of the participants. At one point a sum of money was even promised to the person who could prove Jesus' divinity on a Scriptural basis. An important tool of the *mihadhara* is the sound system. In other parts of Nairobi, I had already witnessed Christian 'crusades' which also use this acoustic method of outreach. A number of microphones go from hand to hand, attracting even more people. A few times I witnessed the collection of money at the end of the meetings for purposes of acquiring these technical devices by selling taped *mihadhara* and religious paraphernalia such as head covers and prayer beads.

Major themes of *Mihadhara*¹⁸

Themes that are discussed at a *mihadhara* range from religious doctrinal and devotional matters to social and political issues. The theological debates deal with (1) the divinity versus the human nature of Christ (*īṣā*), (2) monotheism or unity (Arabic *taḥīd*) versus the Christian doctrine of the Trinity, (3) the one true religion of Jesus versus that of Mohammad, the doctrine of the corruption (*tahrīf*) of the Bible versus the seal (*kbātim*) of the prophets, (4) the crucifixion and resurrection of Christ which are both denied by Islamic tenets, and (5) Jesus' foretelling of the Paraclete and the Prophet Mohammed. These issues form the core and kernel of theological debates from the earliest encounters between Christians and Muslims.¹⁹ To mention only the last controversy (5): according to Muslim preachers, based on John 16:12, the person Jesus promised that after him would come the 'Praiseworthy One' (Greek *periklutos*) or Ahmad/Mohammad, not 'the Spirit of Truth', or the Comforter (Greek *paraklētos*) of Christian tradition. According to Islamic tenets of faith,

Christians have thus erroneously denied Jesus' foretelling of their Prophet.

In addition to these interreligious theological issues, the public preaching also addresses topics regarding Islamic rituals and behaviour, such as (1) the five pillars of Islam, especially prayer, almsgiving and fasting, (2) the most appropriate place for worship, church versus mosque; dietary regulations and ritual purification, and (3) the segregation of men and women during public gatherings such as funerals. Regarding gender segregation, the Muslim preachers confront their opponents by basing their reasoning on the Bible. They maintain that proper decorum in mourning is characterised by the separation of males and females. We heard Muslim preachers interpreting a section of the book of Zechariah (12:11-14), saying: 'You might be mourning here, and there is someone's wife next to you. If a female's thigh is next to yours, there will no longer be mourning but something else'.²⁰ Often the allegedly emotionally unbalanced attitude of women is used as a pretext to exclude them from funerals.

Finally, social and political issues are also debated. Modern technology such as the use of mobile phones in mosques, or medical science (such as the abovementioned Sufi practices of exorcism) are part of the discussions. The corruption of political leaders and the distinction between religion and state, for instance, are also subjects discussed at such public gatherings. The themes may vary during one gathering.

On one occasion, when I had been invited to join *mihadhara*, I was asked to engage in the debate on the issue of the divinity of Jesus and the doctrine of the Trinity. On the same occasion my political opinion was asked about the International Criminal Court (ICC), since – much to the amusement of the audience – I come from The Hague where the ICC is located. At that time several ICC court cases were pending against some Kenyan politicians had been involved in the post-election violence. The backdrop of these allegations was the political issue of the continuing suspicion of the Kenyan government, which scrutinises the preachers' activity and their donors, especially after the Westgate shopping mall attack ('Extremism Muzzles Da'wah Efforts', 2014).

Impact on Muslim-Christian relations

Despite these suspicions, *mihadhara* are currently a common feature in the public space in Eastleigh. It is striking that a considerable number of public preachers appear to be former Christians who converted to Islam, as Joseph Wandera revealed in his research. 'The preachers use their knowledge and experience of Christianity to make a claim for the superiority of Islam on the basis of the Bible' (Wandera 2013a: 32).²¹ Joseph Mutei makes a similar observation. 'A number of former Christian converts to Islam testify on their new found faith at the expense of their former' (Mutei 2012: 35). According to Wandera, '[p]ublic preaching has led on several occasions to tension and violence in Eastleigh. Because of its approach, which is mainly adversarial and touching on the central doctrines of both Christianity and Islam, members of the audience are always tense and exhibit a negative attitude towards each other' (Wandera 2013a: 29). Yet, one of the frequent Christian interlocutors at the *mihadhara*, practitioner Joseph Kwoma Ngolla of Eastleigh Fellowship Centre, still sees possibilities for *mihadhara* as a tool for interreligious dialogue in Eastleigh, and believes it should even be promoted by the Kenyan Government ('Extremism muzzles Da'wah Efforts', 2014). International scholars are, however, less positive about the phenomenon in Eastleigh's public space.

Laurenti Magesa, a prominent Catholic theologian, has defined *mihadhara* as 'public lectures by Muslim scholars, addressing issues to do with Christianity' (Laurenti Magesa quoted in Frederiks 2010: 60). He believes, however, a more proper description of these open-air gathering would be 'vicious polemics'. Johnson Mbillah, former General Advisor of the Programme of Christian-Muslim Relations in Africa (PROCMURA), has described *mihadhara* in East Africa as 'perhaps the worst of the religious expansionist policies... These debates often employ medieval Christian and Muslim polemics against each other' (Mbillah 2004: 69). Mbillah and Magesa, as well as other scholars such as Nnyombi and Maina, have sought to interpret the *mihadhara* of East Africa in the context of Islamic revivalism. Kenyan graduates from Saudi Arabia who represent more extremist Wahhabi/Hanbali strands of Islam confronted their teachings with traditional and moderate Shafi interpretations of religious law (*shari'ah*) and practices. As Maina claims, 'Wahhabism, in its puritanical, uncompromising and aggressive form has been imported into East Africa by many of these recent graduates' (Maina

1995: 172). Deedat, who has been ‘frequently accused of being Wahhabi-inspired’ (Westerlund 2004: 132, cf. Anne Kubai in Hock 2004: 49), allegedly received financial support from the Saudi regime for students attending his *da’wah* training courses at the Islamic Propagation Centre International (ICPI) in Durban. Nnyombi (1997) argues that in the recent past these graduates have created tensions with Islamic traditionalists as well as with Christians, leading to the polemical *mihadhara* preaching in Nairobi. According to Joseph Mutei, ‘new religious vigour and teachings give the local Muslims a boost, whose effect is felt through outlets such as *mihadhara*. *Mihadhara* is therefore not just a method of outreach but also a medium of expression, a means by which Muslims in the region address the prolonged Christian presence and dominance’ (Mutei 2012: 74). Mutei thus reminds us that *mihadhara* mostly appear in Muslim-minority contexts, and often against a historical background of the encounter with Christian outreach methods of the so-called ‘crusades’.

CONCLUSION

‘Eastleigh is not just any place, but one with its own strong character and an uncanny knack of capturing the imagination’ (Carrier 2016: 247). As the real Mogadishu collapsed into conflict, Little Mogadishu has become what it is today: a ‘super-diverse’ place full of contradictions. On the one hand Eastleigh is deeply associated with social marginality and refugees, on the other hand it represents a thriving global hub of trade with dozens of malls with thousands of shops. On the one hand, the place has long been associated with infrastructural decay, while on the other hand it is a place of great personal wealth.

In the wider context of Kenya, Muslims of Eastleigh claim to be the victims of discrimination in terms of political representation and opportunities of obtaining a share in national resources such as education and employment. Mutei wonders whether *mihadhara* can offer a reasonable method of Islamic *da’wah* to counterbalance this discrimination. In order to give *mihadhara* a proper place in Kenyan interreligious public space, ‘perhaps, some toning-down of their polemics would do, to give them a place in the mission field’ (Ibid. 75).

According to Wandera,

The engagement of both Muslims and Pentecostals in public preaching clearly demonstrates the increasing presence of religion in the public sphere. Muslim preachers stood firm upon the argument that their tradition was the real/only truth even though they were in the minority. On the other hand, the Christians believed, and through their sermons, exemplified that their Churches were part of the public sphere. They thus called on their listeners to convert to Christianity by being saved/born again. However, both Muslims and Christians were not engaged in dialogue. They were not talking to each other, but past each other. These forms of engagements point to their differentiated place in Kenyan public life. (Wandera 2013b: 139)

It remains, therefore, to be seen whether interreligious encounters in Eastleigh can still be moulded in a more constructive way than the rather polemic *mihadhara* appear to offer. The *mihadhara* can be seen as an exclusive religious expression in the public sphere of Eastleigh. From this exclusive way of religious expression in the paradigm of discursive inter-religious dialogue, I turn to the study of more inclusive forms of religion in the practice of Eastleigh and in the context of human rights culture.

NOTES

¹ I am indebted to scholar Halkano Abdi Wario for this information.

² 'The racial categories of the British Colonialists placed the Somalis in ambiguous positions. There were three main divisions: Whites (top), Asians which included Arabs (sandwich/middle) and Africans (bottom). The Somalis were classified as Asians (...) and also insisted on preferential treatments and rights to settle in towns in certain instances' (personal comment of Halkano Abdi Wario). Cf. Carrier (2016: 27) talking about Nairobi's 'spacial politics of race'.

³ To understand the root causes of the civil war, some have identified 'contemporary politicized clan identities', while others trace the cause back to 'colonial governments essentialized clan identities' and 'capital economy and the rise of the middle class over and against the desires of the largely nomadic population' (Jacobsen 2011: 61).

⁴ Sufi Sheikh Merabaqsh Abdulaziz has lived in Eastleigh his entire life. During my interview with him, he described the different groups of these three 'waves' of immigrants as: (1) during his early childhood, the Whites, the Hindus and the Somali 'tycoons'; (2) the Kenyans, before and after independence in 1963, and (3) the huge influx of Somalis since the 1990s.

⁵ Ethnicity as such is generally seen as having positive and negative shades and meanings. In Kenya the Somalis are seen as the 42nd 'tribe'. According to the Kenyan census of 2009, with their 2.4 million, 400,000 of whom are officially refugees, the Somalis are the sixth in size (*Kenyan Census*, August 2009).

⁶ Jacobsen (2011: 31) discovered Somali women being the 'back-bone' of Somali society. In Eastleigh, every woman she talked to 'lived in a female-headed household, in which not only was the woman the primary breadwinner, but she was also responsible (...) for the allocation of resources to various tasks and purchases'.

⁷ The Arabic word *īmān* (faith, belief) is not to be confused with *imām* (leader in prayer).

⁸ The Sufis are the mystics of Islam. Their spiritual journey is to experience Allah/God. The movement has roots in early Islamic history. It first developed in Baghdad two centuries after Muhammad's *hijra* (622 AD or 0 AH) from Mecca to Medina.

⁹ *Sūnnī* Islam constitutes approximately 85% of the Muslim population worldwide, whereas *Shī'a* Islam and other smaller sects constitute about 15%.

¹⁰ Courtesy of David Shenk, unpublished paper, Accra, 2010.

¹¹ In Eastleigh *Salafī* are often referred to as Wahhabi, although despite some overlap these groups differ. (Cf. Hourani 1983: 37 and Euben & Zaman 2009: 21) Wahhabism is derived from its founder Muhammad ibn 'Abd al-Wahhab (1703-92). Hanbalism, named after Ibn Hanbal (780-855), the orthodox theologian and legal scholar, was passed on via Ibn Taymiyya (1263-1328) to 'Abd al-Wahhab. Through his close relationship with the kingdom of Sa'ud, Saudi Arabia had become a Wahhabite state. The Wahhābi school of theology depended on Ibn Taymiyya's vehemence in his antagonism toward the cult of the saints in Sufi circles, and its general insistence on a return to original or purist Islam of the first generation (*salaf*). Cf. Mwakimako 2009: 22.

¹² The Muslim Brotherhood, (*jama'at al-ikhwān al-muslimūn*) was founded in 1928 by Hassan al-Banna in Egypt, with the aim of revitalising Islam, and the re-Islamisation of people of all classes, with the ultimate aim of establishing an Islamic State, based on Islamic Law (*sharī'ah*) and the caliphate.

¹³ In public preaching (*mibadharu*) in Eastleigh, the Christian doctrine of the Trinity, according to Islamic tenets, falls under the category of *shirk*, which literally refers to associating, or giving partners to something/someone. In Eastleigh, the concept could also refer to 'syncretism' (cf. Lewis, 1998: 1).

¹⁴ 'Public Preaching by Muslims and Pentecostals in Mumias: Western Kenya and its Influence on Interfaith Relations', University of Cape Town, South Africa.

¹⁵ For a general historical perspective on the theme of interreligious polemics and dialogue among Muslims, Christians and Jews, see Lazarus-Yafeh et al. 1999.

¹⁶ The same title is given to the *mihadbara* I was attending. See front page photo of this study. An often referred-to debate on the same issue whether the Bible or the Qur'an is the word of God, is that between Deedat and the Palestinian Christian evangelist Anis Shorrosh.

¹⁷ In a class on Christian–Muslim Relations (February 2014), a former Muslima and student at St Paul's University compared the '*takbir*' to '*halleluja*', and the response '*allāhu akbar*' to '*amen*' in Christian sermons and public preaching.

¹⁸ Based on Chesworth (2006), Mutei (2012), Wandera (2013a).

¹⁹ For a thorough overview see Chapman 2002: 228–95 and Daniel 1997.

²⁰ Preacher Suleiman Abdallah in 9th Street Eastleigh, *Mihadbara* on 29 March 2013, quoted by Wandera 2013a: 31.

²¹ Wandera's finding was quoted in a national Kenyan newspaper under the heading 'Radicalised Converts Spewing Hatred' in *The Standard Extra*, 11 June 2013, p. 4).

5

Human Rights Culture in Eastleigh

INTRODUCTION

Having outlined the socio-economic, political and religious context of Eastleigh, in this chapter I will address two sub-questions of this study. Which possible contours and features of a human rights culture can be identified in Eastleigh in an interreligious framework? And, do Eastleigh's NGOs and CBOs actually address human rights culture? In 2013 and 2014, I searched for specific answers to these questions. In this period, which coincided with the aftermath of the Westgate attack, the human rights of the residents of Eastleigh appeared to be at risk. A number of Somali business people began to emigrate to Uganda, eventually turning Kampala into another Little Mogadishu. Refugees in Eastleigh appeared to be the most vulnerable section of society.

Human rights culture in Eastleigh exists against the backdrop of Kenya's history of compliance with international human rights law in both theory and practice with regard to refugees. In this chapter I will focus on these refugees' human rights. I conducted interviews about the status of refugees with representatives and workers of the numerous human rights NGOs and CBOs in Eastleigh. In addition to the existing human rights organisations, I discovered that there are networks of paralegals working within a human rights framework. I investigated the individual narratives of these paralegals, both Muslims and Christians, to look into a possible contribution to a human rights culture in Eastleigh. I wondered if and how these paralegals as part of Eastleigh's civil society consider the plight of the urban refugees. Some community-based organisations in Eastleigh map and address the issue of sexual gender-based violence (SGBV) in terms of human rights violations.

KENYA'S REFUGEE RIGHTS STANDARDS

The year 1991 was crucial for Kenya's internal political system. Section 2A of the Constitution, which prohibited a multiparty state, was repealed, enabling other socio-political parties to participate in public discourse. The rise of pro-change movements was facilitated by emergent economic and geopolitical realities as a result of the end of the Cold War. Human rights organisations, religious bodies and other civil society organisations represented a serious societal and political factor, claiming their space in society and challenging the authorities' internal and external policies. Mainline Christian and Muslim organisations and INGOs had already criticised the authorities before, but from 1991 onwards they openly rebuked the government for human rights abuses (Oded 2000: 73). In the same period, almost a year before the first general elections in December 1992, the Islamic Party of Kenya (IPK) was officially registered in the multiparty system. Its establishment was announced in Mombasa, in January 1992 (Ibid. 136). At that stage there was a coordinated call on the government from both Christian and Muslim to respect human rights (Ibid. 102).

The change to a multi-party democratic system was accompanied by a new approach among Western donor countries, who began to link financial assistance to criteria of good governance (Maria Nzomo quoted in Mati 2013: 246). From the late 1980s onwards, donors used NGOs in their policy of resource allocation. 'This resulted in huge investments in germinating a civil society empowered to play a major role in poverty alleviation, governance and, social change' (Ibid. 247). It was at this stage of internal democratic change, and of regional turmoil, resulting in a huge influx of refugees, that human rights organisations mushroomed. The human rights movement, in the form of human rights NGOs, is thus a recent phenomenon in the region. According to scholar and human rights activist Makau Mutua, it was 'not until the 1990s that civil society, and in particular human rights NGOs, became a serious feature of the political landscape in East Africa (...) The whittling away of absolute state power (...) opened the political space necessary for the establishment of human rights groups' (Mutua 2009: 18). In the early stages of Kenya's civil society, according to Miano, 'human rights and governance groups, including faith-based organisations played the most prominent role in expanding the democratic space' (Miano 2009: 221).

During this same period of a new dawn, politically and for civil society, the Kenyan authorities appeared to be alarmed by the scale of the influx from the surrounding countries. The year 1991 was a watershed in the general approach to refugees throughout the Horn of Africa. The end of the Cold War in 1989 had caused political upheaval in the region. Political turmoil in the (as yet undivided) Sudan, Ethiopia and later Burundi, Rwanda and the Democratic Republic of Congo (DRC) caused many people to flee to neighbouring Kenya. As described in Chapter 1, another huge inrush of refugees into Kenya started after the beginning of the civil war in Somalia, also in 1991. Before 1989, refugees came in their thousands, after 1991 they came in their hundreds of thousands, mostly originating from the Horn of Africa. These numbers were beyond the government's capacity to accommodate refugees properly. Kenya even seemed at risk of collapsing under the huge burden. As a consequence, the government started to change its initially receptive attitude toward refugees. The authorities began to consider the refugees and asylum seekers as a huge challenge, if not a threat to national security. Moreover, the cost implications of the fair and legal treatment of these people spiralled out of control. In sum, '[I]f the pre-1991 refugee regime in Kenya can be characterized as generous and hospitable, with emphasis on local integration, the post-1991 regime has been inhospitable, characterized by growing levels of xenophobia, denial of basic refugee rights and few opportunities for local integration' (Campbell 2005: 4-5).

Several decades earlier, Kenya had become a signatory to a host of conventions and treaties dealing with refugees and their protection, including the following:

- (a) The 1951 Convention Relating to the Status of Refugees ('1951 Convention');
- (b) The 1967 Protocol relating to the Status of Refugees; and
- (c) The 1969 Organisation of African Unity Convention (OAU) governing the Specific Aspects of Refugee Problems in Africa ('AU Convention').

International law as well as Kenyan criminal law, prohibit arbitrary detention. According to the International Covenant on Civil and Political Rights (ICCPR, art. 9) to which Kenya is a signatory, 'detention before trial shall be the exception rather than the rule and anyone in pre-trial detention is entitled to trial within a reasonable time or to release'. Kenya

is party to the Refugee Convention (1951) and has ratified the OAU Convention pertaining to refugees. In addition, Kenya is a signatory to a number of international legal instruments that cover international human rights law including the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples Rights or 'The African Charter'. Thus, Kenya is under a legal obligation to ensure that the basic human rights of every person on its territory, including refugees, are respected.

The Kenyan Refugee Act (2006) enshrines the state's international legal obligations regarding asylum seekers and refugees under the 1951 Refugee Convention in law. Under the title 'Rights and Duties of Refugees in Kenya' (Art 16, 1) it is stated that 'subject to this Act, every recognized refugee and every member of his family in Kenya (a) Shall be entitled to the rights and be subject to the obligations contained in the international conventions to which Kenya is party; (b) Shall be subject to all law in force in Kenya' (Kamau 2013: 19). The new Kenyan constitution of 2010 includes, among the key provisions of international human rights treaties, the ICCPR, which Kenya signed as far back as 1972. According to the constitution, all the people who find themselves on Kenya territory, including refugees and asylum seekers, without discrimination on the grounds of national origin or any other status, are entitled to: (1) protection of their physical integrity, freedom from all forms of inhuman and degrading treatment or punishment, (2) freedom from arbitrary arrest and detention, and, (3) protection from arbitrary interference with their property and privacy.

Violations of refugee rights in Eastleigh

In the light of all these national and international covenants and treaties, Eastleigh at first sight seems to demonstrate the bankruptcy of human rights legislation in Kenya. A simple Google search with the words 'Eastleigh Nairobi' elicits over 877,000 results, mostly regarding recent security issues arising from terrorism on the one hand and the plight of Somali refugees on the other. 'The dearth of information and research about urban refugees in Nairobi', Wagacha and Guiney write, 'and the inadequacy of the forums through which these refugees can voice their problems and concerns create a dangerous scenario for them. They frequently

face insecurity and human rights abuse while living with their basic needs unmet' (Wagacha & Guiney 2008: 94-5). There are reports from as far back as 1977 ('Somali agents to be expelled', 1977) and 1989 of Somali residents in Eastleigh being arrested in house-to-house operations. In May 1989, the police forced its way into homes and public places such as restaurants or hotels asking for identity papers. People were harassed in *matatus* and while trading in their businesses. Police also raided a mosque in Eastleigh and arrested worshippers. 'About 800 people subsequently appeared in court charged with holding forged or defaced identity cards, being in the country illegally, or disturbing the peace' (Lochery 2012: 624).

Recent developments seem to underline the crisis of basic human rights in Eastleigh, especially in the aftermath of a series of thirty attacks allegedly perpetrated by *al-Shabab*. On 13 December 2012, Kenya's Department of Refugee Affairs (DRA) ordered 55,000 urban refugees and asylum seekers in the country's cities to relocate to the already overpopulated camps of Kakuma and Dadaab on the borders of South Sudan and Somalia for reasons of national security. Any assistance of NGOs and registration of the refugees and asylum seekers had to end immediately. Recent developments show that Kenyan authorities have a poor human rights record with regard to the right of freedom from arbitrary arrest. A day after a *matatu* minibus exploded on Second Avenue on 18 November 2012, as described earlier, and following an attack on *Hidaya* mosque on 8 December 2012, Kenyan police forces reacted by raiding Eastleigh. A report by Human Rights Watch (HRW, May 2013) entitled '“You Are All Terrorists”, Kenyan Police Abuse of Refugees in Nairobi' has recorded details of human rights abuses carried out during this raid, some of them 'amounting to torture'. The report, based on 101 interviews with refugees, asylum seekers and Somali Kenyans, describes how police targeted men, women and children alike, calling them 'terrorists'.

The evidence obtained by Human Rights Watch shows that between mid-November 2012 and late January 2013, police in Eastleigh who raped and seriously assaulted refugees and asylum seekers intentionally inflicted severe physical and mental pain or suffering while calling their victims terrorists and to extort money from them, thereby indicating the violence was punishment for attacks third persons committed in Eastleigh and to coerce them to pay money to the police to secure their release. As a result,

Kenyan public officials committed numerous acts of torture in Eastleigh during the abuses'. (Human Rights Watch 2013: 31)

In the period between mid-November 2012 and late January 2013, HRW documented cases in which the Regular Police (RP) detained a total of about 300 people in a number of police stations, notably in Eastleigh's Pangani police station. A further 450 or so were detained in police vehicles, of whom 340 by the General Services Unit (GSU) and 100 by RP officers. 57 people were detained in public places in various parts of Eastleigh, 23 of whom by GSU and 20 by Criminal Investigations Department (CID) officers. At least 212 people were detained in their homes, mostly by GSU and to a lesser extent by Administration Police (AP) and RP officers (Ibid. 34). HRW further documented incidents in which interviewees claimed that police officers stole various items and large amounts of money from them while arbitrarily detaining them in their homes, in streets and in police stations. Officers stole mobile phones, jewellery, and business materials, and took cash from them just after forcing them to withdrawn funds from money transfer centres. Many refugees told HRW that they pleaded with the police not to steal from them. HRW also documented 80 incidents where officers extorted money from refugees by threatening to prosecute them and their children for terrorism-related charges, to move them to camps, or deport them to Somalia or Ethiopia. In each case witnesses said that police released them when they paid, indicating that the sole purpose of detaining them was to extort money, and not to investigate crimes or to enforce the government's proposed plan to relocate refugees. How did Eastleigh's human rights NGOs react to these human rights violations?

HUMAN RIGHTS NGOS IN EASTLEIGH

During my research, I was surprised by the number of human rights NGOs that are operating in Eastleigh. When I first began to come to Eastleigh, I encountered only a few FBOs and NGOs such as Canadian Baptist Ministry (CBM), the Catholic Justice and Peace Committee (CJPC), *Kituo cha Sheria* and the United States Agency for International Development (USAID). During the famine in Dadaab-refugee camp in 2011 that caught the world's attention, I also came across well-known medical and welfare organisations in Eastleigh such as Doctors Without Borders and the Red Cross. For one of the CCMRE-projects, we

searched for a partner in Eastleigh that represented the same youthful constituency as St Paul's University. Through the Somali youth organisation YUSOM, we came in contact with an USAID-sponsored mapping project, that traced more than 50 youth organisations in Eastleigh, indicating a high density of grassroots youth centres. However, it was only when I directed my research at the existence of human rights culture in Eastleigh that I became aware of the existence of a huge network of local and national and international human rights NGOs. In addition to INGOs such as HRW, and UN organisations such as UNHCR and UNICEF, I had previously only encountered the NGO *Kituo cha Sheria*. I had expected Amnesty International to be active in Eastleigh, but it is not, as it turns out, and this for a very particular reason.

Moses Opiyo is Amnesty International Kenya's coordinator and is responsible for its Growth & Human Rights Education section. I met him at St Paul's University on the occasion of an inter-varsity human rights debate championship on the theme of *Poverty and Human Rights*. In an interview (27 September 2013) I asked him why Amnesty International was not active in Eastleigh alongside the other human rights NGOs. 'As a movement of nearly three million members Amnesty International is a brand. It is not pro or anti-government, but it wants to be as neutral as possible since refugees' issues can be politicised easily. Our advocacy work is primarily based on proper research and related to human dignity'. When I showed Opiyo the Human Rights Watch report 'You are all terrorists', he stated while pointing at the front cover of the report, which showed women and children fleeing Eastleigh, that 'the picture is already an infringement of the very dignity of the people involved. We rather concentrate on the urgency of forced eviction from slum areas in Nairobi and elsewhere'. Opiyo emphasised the moral perspective on human rights stressing refugees' right to privacy based on their human dignity. Whereas the INGO Human Rights Watch seems to position itself against the authorities in their pro-refugee policy, Amnesty International attempts to remain politically neutral.

According to the HRW report, 'Kituo cha Sheria, Centre for Legal Empowerment' (Kituo) played a decisive role and is well-known throughout Eastleigh. Founded in 1973, Kituo is the oldest human rights organisation in Kenya. Two years after the creation of the law faculty at the University of Nairobi, a group of young lawyers identified a need in the society for legal advice, especially among marginalised groups. At

present Kituo addresses the vision of a society of equity and justice by effectively realising human rights and people's rights (Andreassen & Barasa 2012: 68). Kituo has set up an Urban Refugee Intervention Programme (URIP) office to assist refugees in Eastleigh and announced its presence on local radio stations, in the mosques and during the chiefs' barazzas in Eastleigh (Ibid. 69).

In 2010, a member of the St Teresa Catholic Church's Justice and Peace Committee (to be introduced in the next chapter) guided me to this NGO located at that time on the top floor of a business centre in the heart of Eastleigh. In April 2012, I visited Kituo together with Christian and Muslim students in the framework of a Masters ICMR course on 'Religion and Human Rights'. The organisation is currently located in the outskirts of the Kamakunji district, which is responsible for the sections of Eastleigh North, Eastleigh South and Pumwani. Kituo employs both Christian and Muslim personnel. It offers free legal advice and legal representation. It investigates systematic human rights abuses and conducts research and training seminars on human rights law and refugee law. Thus, Kituo is a legal aid NGO that offers Eastleigh's refugees assistance in their dealings with the authorities. On 21 January 2013, for instance, Kituo lodged a petition at Kenya's High Court. The organisation believed the government's proposed relocation plan was unlawful, and the court ordered the authorities to cancel the policy until the court had ruled on its legality (Human Rights Watch 2013: 43).

Programme officer, advocate and legal officer Grace Omweri works for the Forced Migration Programme (FMP) section. She is involved in this case of the forced relocation of refugees in Eastleigh. When we asked her how her organisation had come to be involved, she replied, 'We just did our work. We could not expect the positive outcome of it. We focused on specific cases in order to give the forced relocation a human face, instead of telling a general story. At the moment Kenya's Department of Refugee Agency (DRA) has appealed, so the case is not yet won' (interview, 19 August 2013).

Kituo is part of NURRIA (Nairobi Urban Refugee Rights Integration Activities) (interview, 27 August 2013). This is a European Union-sponsored network of organisations that protects and promotes urban refugee rights. Kituo – in a joint venture with the International Rescue Committee (IRC) and the Italian NGO International Committee for the Development of Peoples (*Comitato Internazionale per lo Sviluppo dei Popoli*

(CISP) – endeavours to enhance the knowledge of police, judicial officers, law practitioners and students in their understanding and enforcement of refugee acts (leaflet found at Kituo office, August 2013). In order to find out more about this network, I arranged a meeting with Stephen Okello Oguwa, the International Rescue Committee (IRC)’s interim director. The organisation’s slogan is ‘*From Harm to Home*’. The office is close to the place where the *matatu* minibus exploded on 18 November 2012. When I entered the organisation’s rather tucked-away premises above a bank on the second floor of a building, I saw a large group of Somali Muslim refugee men and women waiting for assistance.

The IRC was founded in 1933 and originally based on an idea of physicist, humanitarian and refugee Albert Einstein (‘Albert Einstein and the birth of the IRC’, 2017). It is ‘committed to freedom, human dignity and self-reliance’, envisioning the ‘protection and promotion of rights’, ‘capacity building and peaceful co-existence initiatives’. It offers support to urban communities in Nairobi, particularly to refugees from Ethiopia, Eritrea, DRC, Rwanda, Burundi and Somalia. The centre offers community representatives and government officials training sessions and awareness building seminars about refugee rights. ‘To address the information gap challenging urban communities, especially refugees in Nairobi, the IRC established a centre in Eastleigh that acts as a centre for all necessary information and provides services to refugees and vulnerable Kenyans in Nairobi’, as I learnt from the IRC director. The centre wants to act as a safe haven, ‘following the principle of the *right to information as a tool for protection*’ (leaflet IRC, italics original). IRC supports refugees by establishing groups that subscribe to small micro-enterprises for household income and self-employment. It has developed an innovative model called EASE (Economic and Social Empowerment) to give women more access to financial stability and provide opportunities to both women and men to create more equitable and safe gender dynamics within their households (Ibid.). Oguwa underlined that IRC not only offers these income-generating services to refugees, but also to local Kenyans, in order to avoid ‘xenophobic tendencies’. Moreover, IRC wishes to operate as a neutral organisation with regard to politics and religion. It primarily works through local organisations such as Youth Initiative Kenya and Family Health Option Kenya. These are only two of many more organisations working for refugees that I encountered during my research.

IRC is one of 25 stakeholders in another large network, the Urban Refugee Protection Network (URPN). One of URPN's prominent members is the Refugee Consortium Kenya (RCK). RCK is a legal aid and policy development centre which has been operating since 1998. I visited the RCK's main office 'Haki House' (literally: House of Right) in Kilimani district, in central Nairobi. I met one of the lawyers there, Peter Karera (interview, 6 September 2013), who also happened to be the co-ordinator of the legal clinics at Mama Fatuma Children's Goodwill Home in Eastleigh, one of the FBOs I will discuss in the next chapter. Karera divides RCK's work into three parts: (1) legal aid, assisting forced migrants and internally displaced persons (IDPs); (2) the advocacy programme, lobbying for refugee protection through legislation, and (3) the research and information department, for collection and dissemination of knowledge about the status of urban refugees and IDPs. Posters scattered through the RCK building promote the organisation's vision and mission such as: 'A world where refugees and other forced migrants enjoy their rights and live with dignity', and 'To protect and promote the rights and dignity of refugees and other forced migrants through enabling programmes on legal aid, advocacy and awareness creation'. Based on values such as respect for human rights and dignity, gender equality, and cultural diversity, RCK uses a rights-based and community-oriented approach in order to 'sensitize refugees on their rights, obligations and on self-representation skills' (leaflet RCK obtained after interview, 13 September 2013).

Thus prominent organisations such as Kituo cha Sheria, the International Rescue Committee (IRC), and International and Refugee Consortium Kenya (RCK) are part of larger networks like NURRIA (Nairobi Urban Refugee Rights Integration Activities) and the Urban Refugee Protection Network (URPN), comprising dozens of human rights agencies. Human rights NGOs appear to be part and parcel of Eastleigh's extensive civil society.

Having described the institutional level of human rights agencies in Eastleigh, I will now focus on some of the individual agents who embody human rights culture on the ground.

THE PHENOMENON OF PARALEGALS

Aloysius Njoroge, a social worker at St Teresa's Catholic Church in Eastleigh, was the first to inform me about the phenomenon of paralegals, in February 2011. He told me that after the post-election violence of 2007 and 2008, internally displaced persons (IDPs) had not been assisted properly by either national or local authorities. According to him, justice had been denied to people of the parish community due to the length and expenses involved in judicial procedures. Due to the paralegals' 'pushing' system, however, some cases had been solved. One case from St Teresa's Parish, for instance, was a woman, who, in her role as a paralegal, pleaded for justice after the murder of her husband in 2008. The woman had been strategically supported by Eastleigh's civil society members who gave voice to her case through the media. While showing me the newspaper article, Njoroge told me, that she won her case and that she has been compensated for her loss.

The organisations Refugee Consortium Kenya (RCK) and Kituo, introduced above, are involved in the training of paralegals. Kituo received serious resistance from the government when beginning the process of formulating a policy on paralegal training and practices.

At first, the government expressly opposed paralegal training, but Kituo vehemently insisted on carrying out training of paralegal trainees. As a result, the government changed its position and accepted the importance of paralegal training. Today, when new chiefs are recruited, priority is given to candidates with paralegal training, which demonstrates the success of Kituo's engagement. (Andreassen & Barasa 2012: 64)

Kituo carries out paralegal training by broadcasting debates and entertainment programmes on the radio and television. Through legal aid programmes Kituo creates awareness of people's rights such as land rights, labour and housing rights, in addition to women's and children's rights. In Eastleigh Kituo focuses on refugees' rights in its aforementioned office. RCK's advocacy programme identifies and trains paralegals on human rights issues and assists them in 'monitoring refugees, IDPs and returnees in Kenya and the region' (leaflet Refugee Consortium Kenya). By enhancing their knowledge and agency on refugee law and practice they can assist in securing the refugees' dignity as outlined in the fundamental right to family in Article 16.3 of the Universal Declaration of Human Rights (Ibid.). RCK's Peter Karera explained how the profes-

sional lawyers, in line with UNHCR terminology prefer to talk about 'protection and detention monitors', rather than (quasi professional) paralegals. 'Protection monitors' are persons who intervene on behalf of refugees whenever these are arrested by the police. 'They take care of the first response as legal protection monitors on the ground. If the case becomes too difficult they refer to RCK'. Detention monitors are legally trained citizens who work on behalf of refugees whenever they are detained by local authorities.

The paralegals are trained *pro bono* by professional lawyers who offer support in complicated criminal and other cases. The outcome of such cases has been relocation to so-called 'third countries'. Another reason for an official request for relocation to a third (Western) country is harassment by the Somali Muslim refugee community of those who have converted to Christianity. Karera referred to one case in which a converted Somali Muslim refugee was relocated by UNHCR, after receiving assistance by a Christian organisation in Eastleigh. 'The next day 25 cases of harassment by the community were reported as grounds for a request for relocation' (...) 'In such cases we have to do research in order to find the background of these cases, since many want to be relocated (to the West)'.

I also discussed the phenomenon of paralegals and their role in Eastleigh with Kituo's Grace Omweri. According to Omweri, lawyers sometimes regard paralegals as somewhat of a challenge, comparable to the doctor-and-nurse relationship in terms of contentions regarding the other category's competence. According to Omweri, the core problem of the legal situation of refugees in Eastleigh is the inefficiency of the criminal law system in Kenya. Judges cannot handle the criminal cases on time. The litigants go free for a long time before their cases are processed. In her estimation, this explains why people are taking the law into their own hands in the form of 'mob justice'. In some instances, Kenyan police kill criminals on the spot as part of a 'shoot to kill policy'. Paralegals have therefore come to the fore as agents on the ground that can prevent possibly volatile situations. Kituo sponsors forty Community Justice Centres (CJCs) throughout the Kamakunji district to which Eastleigh belongs. In doing so, it attempts to bring legal aid closer to the grassroots community. Together, these forty centres are combining forces under the umbrella of the Kamakunji Community-based Organisations Network (KCBONET). People at community level are being

trained as paralegals to solve legal issues locally before they come to the often costly and time-consuming court system. In the course of my research I found that both Christian and Muslim individuals are passionately involved as paralegals through networks such as KCBONET (Andreassen & Barasa 2013: 80). Kituo supports their capacity to demand their rights. By building a common ground shared by its members, KCBONET promoted the rights of its constituents, both Muslims as well as Christians. I will now briefly introduce a number of the individual paralegals.

Christian paralegals

In our search for organisations that work through paralegals, we visited St John's Community Centre in Pumwani. St John's Community Centre (*Bearing One Another's Burden*) is a Christian Community Service Organisation of the Anglican Church of Kenya, Diocese of Nairobi. We spoke with Stella Hzoï (interview, 19 August 2013), who works for the Empowerment and Advocacy Programme that 'seeks to build the capacity of the community to enhance local democratic governance and uphold human rights. This increases the people's capacities to engage, influence, defend, protect and demand their rights from those who act on their behalf and make decisions that affect them' (leaflet of St John's Community Centre, 19 August 2013). Hzoï, who happens to be a former student of St Paul's University, informed us that the system of paralegals already existed under the Arap Moi regime that ended in 2002, and was engaged in addressing issues of human rights abuses during that period. She told us of the existence of the Kamakunji Paralegal Network, which has offices scattered across the district, including in Eastleigh. As part of the Network, citizens from the community, both Christians and Muslims, volunteer as trained paralegals. Hzoï's office put us in touch with Mr Anyanzwa, who is one of the 26 paralegals associated with the Kamakunji Community-based Organisations Network (KCBONET) in Eastleigh. Anyanzwa lives behind the St Teresa's Catholic Church, from where he commutes everyday to the Pumwani Community Justice Centre as a volunteer. He deals with issues such as land cases, property cases, legal issues between tenants and landlords, domestic violence and children's rights. According to Anyanzwa, paralegals are the first to monitor this kind of cases. 'Justice delayed', he says, 'is justice denied. To solve legal issues through the court takes too long, and, by the way, these cases

are far too expensive' (interview, 22 September 2013). Anyanzwa has specialised in children's rights issues in cooperation with UNICEF, SOS Child Rights, and the International Justice Mission. He stated explicitly that the Pumwani Community Justice Centre does not deal with criminal matters since these cases exceed the competence of the KCBONET network. Anyanzwa told us that the network numbers more men than women paralegals but that 'Muslims and Christian paralegals are on par'. Cases are divided among the paralegals, since some Muslims bring issues related to Muslim family law (MFL) that Christian paralegals are unable to handle. Anyanzwa referred us to the International Refugee Committee (IRC) in Eastleigh where groups of Muslim and Christians are brought together to discuss peace-related matters and solve legal disputes. Anyanzwa gave us also some insight in other issues that the paralegals network deals with, such as children's rights and land rights. Other cases such as issues related to criminal law, they leave to legal specialists. According to him, Christians and Muslims seem to be working together cordially at the community level on matters related to rights. Through the role of these paralegals, we can see a human rights culture emerging from different faith backgrounds.

At St Teresa's Catholic Church, I met Peter Musembi, the chairman of the Catholic Justice and Peace Committee (CJPC). He is also trained as a paralegal and deals with marital, and inheritance-related issues, and more particularly with land issues and children's rights. In the next chapter I will discuss Musembi's work in greater detail. Musembi is yet another example of a paralegal, who through his advocacy work is bringing human rights into the practice of Eastleigh from a Catholic perspective on justice and peace.

Accompanied by my gatekeeper Merabaqsh Bunni, I also visited the community-based organisation 'Peace and Heart Initiatives Network', where we were received by its executive secretary Andengah Dan Paul. Dan Paul introduced himself as 'a Catholic sociologist' (interview, 4 September 2013) and a trained paralegal. From the outset, however, he emphasised that his organisation does not favour one particular religion over another. To introduce his position, he draws from all religious traditions to buttress the organisation's services to the wider community, quoting from the Hindu Vedas, the Bible and the Qur'an. The motto of the Peace and Heart Network in Ki-Swahili – translated as: 'Lasting Peace is inside the heart' – is derived from multi-religious sources. Dan

Paul links this motto to Chapter 2 (10,2a-d) of the Kenyan Constitution (2010: 27) by quoting ‘the national values and principles of governance’, including ‘patriotism’, ‘sharing and devolution of power’, ‘human dignity’, ‘social justice’, ‘human rights’, ‘protection of the marginalised’, ‘integrity’ and ‘sustainable development’. ‘In short, it is about the rights of the community’, he said, while handing us copies of the Kenyan Constitution and two volumes of ‘Acts Relating to Devolution’ of the Constitution. The books – sponsored by *Uraia* (Kenyan National Civic Education Programme: ‘A healthy democracy is developed by an informed citizenry’) – were financed by the Canada International Development Agency, DANIDA, UKAID, USAID, UNDP, and the Finish, Norwegian and Dutch embassies. As a trained paralegal Dan Paul organises ‘civic education’ programmes together with community leaders to make the local community aware of its rights and responsibilities.

The objective of the organisation is to ‘work with the marginalised communities for restoration of human rights and dignity’ (leaflet of Peace and Heart Initiatives Network). Its approach is of of practical nature and concentrates on issues of advocacy, as Dan Paul illustrates with several examples:

Behind Mama Fatuma Goodwill Children’s Home, we managed to have a large heap of garbage removed, by addressing the local authorities. Now it has just been removed from there by our common effort... We also addressed the local governor with regard to the issue of water supply. ‘Why is water in Eastleigh four times as expensive as the price of water in prosperous neighbourhoods like Karen, Runda and Westlands?’, we asked the governor. We recently got permission to dig our own well here on the compound and sell it at a normal price to the local people.

He illustrated another good practice of such advocacy work by pointing at the Coca Cola-sponsored red building across the street which had recently been in the news and portrayed as a hotspot of prostitution, a brothel. After analysing the problem Dan Paul concluded that the real problem was not prostitution as such, but human trafficking. He reported this to the authorities. In these and other ways, according to the organisations leaflet, the organisation aims at sensitising communities ‘on their roles and duties in addressing justice, peace development, human rights and reconciliation’ (leaflet obtained during the interview, 4 September 2013).

The aforementioned Christian paralegals referred back to their respective organisations as reflected in their human rights- and human dignity-related documentation (leaflets, brochures and websites). During the interviews they either implicitly or explicitly mentioned their religious affiliation as relevant to their activities. According to the Christian paralegals, the KCBONET network's Muslim and Christian paralegals cooperate, while respecting one another's expertise. Do the Muslim paralegals share the same, rather seemingly harmonious, picture of the interreligious human rights praxis in Eastleigh?

Muslim paralegals

Via my research partner and gatekeeper Merabaqsh Bunni, I met Mariam Ali Famau, one of Kenya's first female Muslim paralegals. In an extensive interview (19 August 2013) at her home, Famau showed me graduation pictures of the first group of graduated paralegals in 2002. She handed me photocopies of the certificate of the paralegal training course conducted by a regional paralegal network. The certificate shows that a wide range of human rights-related topics that had been covered during the programme: nature, meaning and source of Kenyan law; constitutional law; human rights and monitoring; alternative dispute resolution (ADR); children's rights; land laws and land rights and, family law and law of succession (photocopy of Certificate of the Community Initiatives Consultancy Services, on file). Another certificate issued by the Consortium for the Empowerment and Development of Marginalised Communities (CEDMAC) in 2011 shows that she successfully completed a paralegal refresher training course. She also handed me a document of the Release Political Prisoners Trust to certify that she had attended a four-day training course on enhancing security and protection of human rights, which included topics of security and protection of human rights defenders, legal instruments on human rights defenders work and stakeholders analysis on human rights defenders' work (photocopy of Certificate of the CEDMAC, on file). Famau told us how her position as a paralegal had changed her life and that of some of the community members around her. 'For the first time we became aware of our rights'. Disputes within families at a local community level could be solved by her and her fellow paralegals before these cases went to court. Disputes about cases of illegal and incestuous sexual intercourse, as well as small-scale land and property issues, are solved at community level. At a forum about

female leadership in religious matters in 2009, Famau had pleaded vociferously for equal representation of women at the *qāḍī*-court, but this had been misinterpreted as a personal campaign on her part to become the first female judge or *qāḍī*. During an interview, she took a copy of the freshly printed 2010 Kenyan Constitution from her bag and read out what it had to say about the gender of the appointed *qāḍīs* in Kenya. The relevant clause of the Constitution does not mention the issue of gender, thus leaving room for female representation. She made this point especially with regard to cases of Muslim family law that involve women's issues, such as inheritance and divorce-related matters.

Famau has been collaborating with the Kenyan police on drugs-related issues in her neighbourhood. She has witnessed how illegal distillation of alcohol has poisoned people in the community. She has also advised local police officers on issues related to the use of *khat*. In passing, she pleaded for more understanding of the position of police officers: 'I should bring you to one of the houses where these police officers live. Whole families live side by side in rooms which are only divided by curtains. They hardly earn a decent livelihood'. She even spoke of the neglect of the police officers' basic human rights.

Famau recently started a new organisation, a joint venture of local Muslim community leaders and the Christian YMCA National Training Institute, Kamakunji. I was invited to the inauguration ceremony on 12 August 2013. The local imam and trustees of the nearby mosque were present at the meeting, alongside Christian members of the YMCA and Muslims and Christians from the surrounding community. The purposes of the new organisation were described as providing free legal aid and free medical camps to disabled people in the community. A special project carried out that day was a joint clean-up of the surrounding streets to prevent illnesses such as cholera and dysentery.

Famau's involvement as a paralegal at the local level is an example of human rights activism 'from below'. The list of subjects described in the certificates she showed us provides an insight into how paralegals are trained by legal professionals. Her case further helps us to understand how she applies the rights-based awareness, knowledge and skills she had acquired to her work as a community leader. With the 2010 Kenyan Constitution in hand, she had challenged the contentious issue of gender of the *qāḍī*. In her work she collaborates closely with the Christian organ-

isation YMCA. But Famau is not the only paralegal who is creating human rights culture in Eastleigh.

Abdulrazak Nurain is another Muslim paralegal and human rights activist in Eastleigh. During a three-day workshop on sexual gender-based violence, I met him at the premises of the Presbyterian Church of East Africa organised by the Danish Refugee Council (DRC). Nurain was one of the conveners of the event. I held an interview with him at Mama Fatuma Goodwill Children's Home (Second Street). Nurain introduced himself as a voluntary paralegal officer, a human rights activist and community leader in the refugee community in Eastleigh. He claims he was the one who first suggested that the Eastleigh case of harassment of refugees by the Kenyan police should be taken to court. Later that day he sent me a letter written to the UNHCR underscoring his civic action.

We are human rights activists, and we should always speak up. Still the government of Kenya has to produce the evidence that refugees are behind the grenade attacks. Not one single refugee has been arrested on charges of terrorist activities. It is all politically driven. Every day five people are killed because of reasons of property, but the police are continuing to harass refugees. (Interview, 1 September 2013)

As a refugee paralegal of Somali descent, Nurain was dedicated to enforce the rights of the refugee community. He wrote letters to the UNHCR and Kituo to inform them about the situation on the ground especially after the police raid of 18 November 2012. With his knowledge of the UDHR and especially of the Kenyan Refugee Act of 2006, he felt secure in performing his advocacy work. He was invited to attend the court case against the government of Kenya concerning the relocation of refugees from Eastleigh to the Dadaab and Kakuma refugee camps and he later forwarded the detailed ruling of the judge to me. Paralegals such as Nurain work at the grassroots level and in the day-to-day practice in Eastleigh. For instance, he organised a soccer competition at the community level, subsidised by a German NGO – GIZ (Gesellschaft für Internationale Zusammenarbeit) – in order to bring different opposing groups together. After the tournament, he was threatened several times by anonymous people for organising a sports event in the fast-ing month of *ramadhān*. He calls the group from which these threats emerged the *khawārij*.¹ According to Nurain, these 'extremists' are nowadays represented by groups such as *Boko Haram* in Nigeria and *al-Shabab*.

‘These Khawarij do not represent Islam at all. We all, Muslims and non-Muslims alike are suffering because of them’. According to him, human rights activists and paralegal officers should mentally and financially empower the community, Eastleigh’s young people and religious leaders to withstand these kinds of groups. For that purpose, ‘paralegals should make use of the media to let the world know what happens on the ground. When many Somali people fled from Eastleigh last December 2012, he said, paralegals used the media to inform the people about their rights to stay’. Nurain helped me to understand how paralegals are linked to NGOs such as Kituo bring to light cases of human rights violations on the ground. By his naming-and-shaming advocacy on behalf of the refugees, he contributes in my view to human rights culture. He also helped me to understand how his human rights activism as a Muslim paralegal is being challenged by intrareligious tensions.

Said Abdullahi Abukar is yet another paralegal from a Muslim background. When we first met at the Mosque at Third Street, he welcomed me to ‘ghetto Eastleigh’. He began our conversation in the same vein as Nurain by referring to different Muslim denominations in Eastleigh in terms of ‘moderates and Salafi Muslims’. Sitting in one of Eastleigh’s many cafés, he asked rhetorically: ‘Who was the first IDP (internally displaced person) ever?’. Before I had time to think about a possible answer, he answered the question himself: ‘The Prophet Muhammad – Peace be upon Him – was fleeing from persecution and sought refuge in Abyssinia. There a Christian king granted him asylum. This Christian king, ‘the lion of Judah’, gave him shelter and freedom of worship’ (interview, 27 August 2013). By referring to this ‘first Christian-Muslim dialogue’ between the Christian Negus of what is now Ethiopia and the persecuted converted Muslims from Mecca, Abukar places the present situation of refugees in a historical perspective. Talking about his role as a ‘refugee-paralegal’ he continued in a way reminiscent of Nurain: ‘What we as refugees lack is equity and respect. The issue of relocation of Somali refugees is just an opportunity for them [the authorities] to loot, to rape and to steal’. However, ‘ever since Somalia’s collapse in 1991, not a single Somali culprit was arrested for terrorist activities’. ‘We refugees are 100% clean. I am proud to be a refugee’. Acting as paralegal, Abukar told me that he was the eighth litigant listed in the court case against the government of Kenya concerning the relocation of the 55,000 refugees. He

was the eighth petitioner and is introduced in the courts document as follows:

The 8th petitioner is aged 47 years and holds UNHCR Mandate Number. He is a refugee from Somalia and married with two children. His wife and children are in the Netherlands. The petitioner first arrived in Kenya in 1994 through Mombasa and settled at Benadir Refugee Camp. He left the camp with his sister and her children in 1997 after its closure. He then started engaging in business in Mombasa town where he bought a *Jua Kali* stall in Marikiti. He later started facing threats from some of his countrymen who wanted to forcefully obtain title documents relating to his property back in Somalia. Consequently, he fled to Malindi and left his cousin in charge of the business in Mombasa. In 2001 he came to Nairobi and has since been residing in Eastleigh. He lives with his sister and her six children. His sister holds [a] UNHCR Mandate Number. All her six children were born in Kenya.²

Abukar presents himself as a 'refugee paralegal' and takes pride in his status, as his e-mail address shows: *proudoofbeingarefugee*. He is not shy about his religious motivation and started the conversation by talking about the proto-refugee from an Islamic perspective, the first *hijrah*, or emigration of the Prophet Mohammad, in 615 CE to Abyssinia, Ethiopia. As a petitioner he played a significant role in the refugee relocation case against the authorities. With some of his children living in the Netherlands, he opted to obtain a visa and to continue his paralegal activism on behalf refugees.

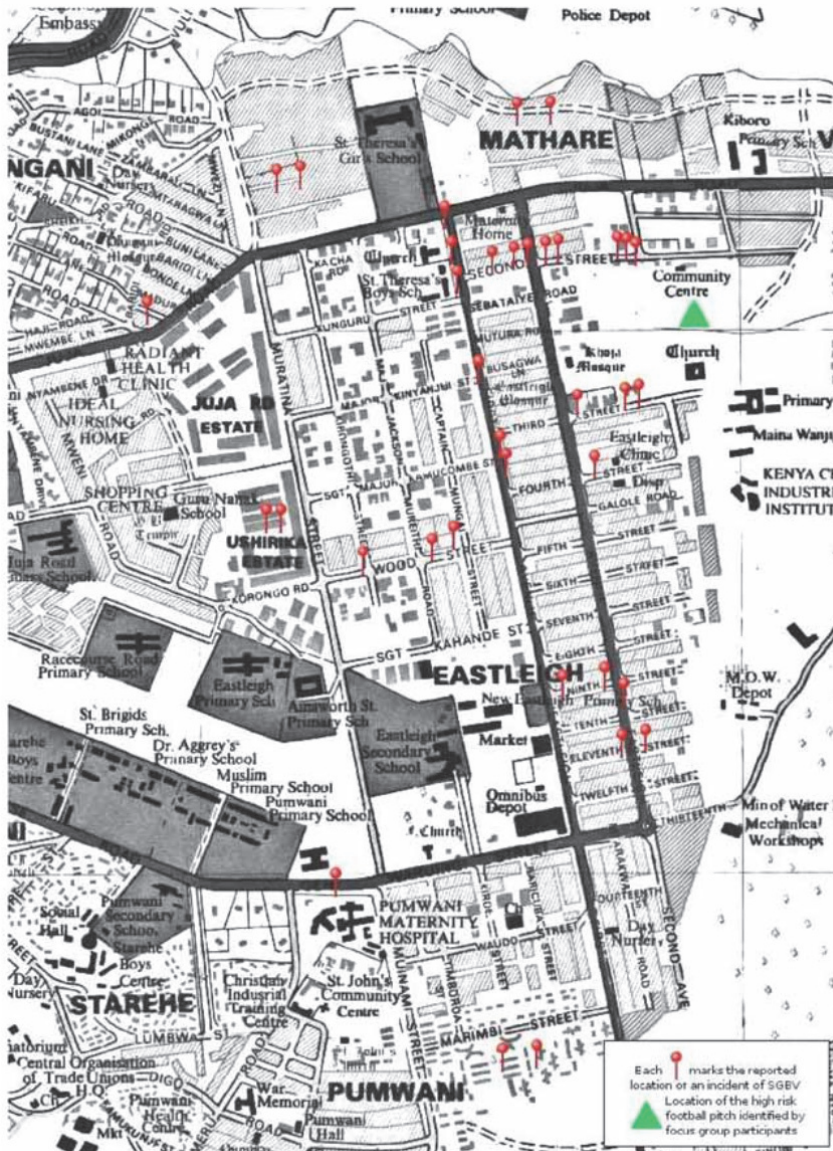
Like Nurain, Abukar also pointed to early Islamic history to explain present-day intrareligious tensions in Eastleigh. These historical frictions still seem to be present when they talk about their role as paralegals and human rights activists. Both paralegals have been involved as initiators in the court case concerning the relocation of the urban refugees, in spite of their vulnerability as refugees in Eastleigh. They combine their roles as paralegals, refugees and human rights activists. Both men's spouses reside in Europe. They both envision joining their core families in the future and continuing their advocacy work on behalf of Eastleigh's refugee community from abroad. In the meantime, paralegals like Nurain continue to be active in Eastleigh in the field of combatting the sexual harassment of refugees.

SEXUAL GENDER-BASED VIOLENCE (SGBV)

'Despite Kenyan women's significant progress toward equal rights, discrimination and widespread gender-based violence are serious and persistent problems' (Marshall 2017: 73). Human rights NGOs in Nairobi have been reporting high incident rates of SGBV. These cases affect the urban refugee communities in particular. Studies of SGBV are scarce, most studies only mention SGBV-related cases in passing. In the case of the Dadaab refugee camp, such reports first appeared in 1992 and 1993. The urgency of the crisis reached its peak in 1999 when the Kenyan Human Rights Commission labelled the Dadaab complex 'The Raping Fields' (Lawyers Committee 1995: 66; Kenya Human Rights Commission, 1999 in Refugepoint Sexual and Gender-based Violence: Extra Report, 2012: 13). 'Refugees have sought safe haven in their country of asylum but have not always had their expectations realised. Instead, many have found themselves vulnerable to a vast array of protection risks particular to the refugee context, including the very real threat of sexual and gender-based violence' (Ibid. 10). Nurain describes gender-based violence (GBV) as rampant in the Eastleigh community.

Yes, there are GBV cases that happen within the refugee communities, schools, madarasa, and work-places in the urban populated in Nairobi, and it's for that reason we train the refugee community leaders and volunteer workers of both sex (male and female) to help their community members in the prevention, managing and referral systems on SGBV and all forms of GBV survivors'. (E-mail from Abdulrazaq Omar Nurain, 30 August 2013)

In 2012, I interviewed Carrie Hough, an English anthropologist who works for an NGO called RefugePoint. At the time, she was working on a report entitled 'A man who does not beat his wife is not a man: Risk Factors and Cultural Conceptions of Sexual and Gender-Based Violence among Horn of Africa Refugees in Nairobi' (photocopy of the report, on file). Hough and her fellow researchers collected primary data in Eastleigh between August and November 2011.³ The map below depicts the locations of initial contact between survivors and perpetrators. The 'high risk-areas' are immediately identifiable.



Specific locations of first points of contact between victim/survivor and perpetrator of SGBV incidents that occurred in Eastleigh, Nairobi. (Source: Hough 2012).

This study documents a high prevalence and ongoing tolerance of intimate partner violence, Female Genetal [sic] Cut (FGC) and wife beating within the Horn of Africa refugee communities in Nairobi. The taboos surrounding a woman discussing sexual relations with her husband to anyone outside of their relationship have implications for addressing intimate partner violence. The challenge presented is whether service providers, communities and policy makers can use these findings to inform relevant, effective interventions that will increase individual sexual agency and awareness of rights. (Hough 2012: 25)

RefugePoint places ‘effective interventions’ with regard to SGBV in the context of the ‘awareness of rights’. By mapping SGBV cases, this human rights NGO provides factual information as input for its naming-and-shaming advocacy work.

After the period of police raids in Eastleigh in 2012, interviewees – including victims, social workers and the aforementioned MP Yusuf Hassan – reported to HRW that police officers had raped refugees ‘including two cases of gang rape in homes, side streets, on wasteland, and in some cases with children close by’ (HRW 2013: 2). According to HRW, the victims did not report the cases to the police since ‘they thought it would be pointless to inform the police that police had raped them’ (Ibid. 19). Only some of the victims sought medical care, being unaware that international NGOs such as Doctors without Borders provide free medical care. After the raids that took place under the pretext of relocating the 55,000 urban refugees, the International Rescue Committee (IRC), for example subsidised Kituo to provide legal aid to the refugees affected. IRC director Oguwa’s colleague Margaret Oluwo (specialised in SGBV) referred to the Nairobi Urban Refugee Protection Network (URPN) of which some 30 organisations are members. The *Ummah* community-based organisation (CBO) is one of these members. It receives support from IRC for SGBV awareness building.

Ummah is led by Mrs Lulo, a Kenyan-Somali Muslim woman whom I met at the *Ummah* Centre. The organisation started as a support group for women to build awareness in matters of HIV/Aids. Lulo had initiated a *Post Test Club* for women affected by the disease. Her campaign on the use of condoms had earned her the nickname ‘Mama Condom’ from the local community. According to Lulo, ‘At some point people were carrying packets of condoms openly in the street’ (interview, 27 August 2013). She discussed Aids with the local sheikhs and confronted them on

their own sexual attitudes. 'They say that under Muslims there is no Aids, but there is'. *Ummah* organised three-week training courses in Eastleigh after the police raids in February 2013. Lulo, not being a victim herself, was one of the interviewees of the 2013 HRW report. She brought along other alleged rape survivors to be interviewed for the report. When I met with her, she introduced me to one of them, a woman who had just received news that she had been granted a visa to go to Sweden with her six children. Referring to *buufis*, Lulo stated that, 'Many people here are in transit. Their mind is somewhere else, in the US or in Europe'.

Judging from RefugePoint and HRW reports, SGBV seems to be rampant in Eastleigh. In my interviews with people working for other NGOs, however, the HRW report was also criticised for exaggerating the scale of the phenomenon. In an interview with counsellor Tabitha Njuguna of RefugePoint (interview, 14 September 2013), who specialises in GBV, the desire to relocate to third (Western) countries can sometimes be a reason 'to make up GBV stories', which are hard to prove. 'In their eagerness to go abroad some women are biased'. Njuguna coaches women refugees in sessions of psycho-social thematic groups that are held on a weekly basis at the premises of Mama Fatuma Goodwill Children's Home. She deals especially with issues of domestic violence. She quoted one Oromo woman saying that 'a man who does not beat his wife, probably doesn't care for her'. As a counsellor in such culture-based cases, she says she 'brackets' her gender-related Christian values. In cases of prostitution for reasons of poverty, she offers her clients loans to start a small-scale business to be paid back once the women in question succeed in earning a basic income to sustain themselves, since 'you cannot counsel a hungry person'. 'After police raids in Eastleigh following the grenade attacks in November, she recalled, 'the monitoring paralegals informed us about what happened on the ground. There was a lot of harassment and even extortion taking place by the police, but about the rape cases as reported by Human Rights Watch, we are not so sure'.

According to Karera, these women often use SGBV to make a relocation request to the UNHCR. Karera of Refugee Consortium Kenya (RCK) referred me to the office of Médecins sans Frontières (MSF, Doctors without Borders) in Eastleigh, where undocumented women could report their cases confidentially and free of charge. At Karera's instigation, I interviewed Mr Peterson, manager of three MSF clinics in

Eastleigh. One clinic, which we were not allowed to enter, treats TBC-patients and caters to a population consisting of 70% Somali refugees. Two other clinics treat HIV/Aids patients and SGBV survivors, respectively. According to Peterson, 'The intake of Somali women has always been minimal and has not decreased or increased recently, also not before, during and after the bomb blasts' (interview, 18 September 2013). Mrs Purity, a doctor specialised in the treatment of SGBV survivors, was asked to join the interview. She told us that 15% of the SGBV survivors is from the Somali refugee community, a figure which has been fluctuating recently.

To conclude the discussion on the SGBV issue I should also mention the Hebrew Immigrant Aid Society (HIAS), an organisation that was founded in 1881 in New York originally to assist persecuted European Jews to come to the United States. HIAS has been operating in Kenya since 2002 under the name HIAS Hebrew Refugee Trust of Kenya (HRTK). This NGO provides legal assistance to refugees for whom resettlement to a safe third country is considered to be the best option. As part of the URPN network mentioned above, its focus is on the rights of sexual minorities and SGBV survivors. HRTK's mission and vision is to assist vulnerable asylum seekers and refugees by providing protection, assistance and solutions to those at heightened risk, thus, alleviating the suffering of refugees and restoring their dignity (HRTK brochure; HIAS 2012; cf. Marshall 2017: 58). We visited HIAS ('Welcome to the stranger, protecting the Refugee') in January 2014. After extensive security checks, we met Joshua Kodiaga MacArthur, Director of HIAS (Eastleigh Branch). He explained to us how his organisation had historical roots in the plight of European Jews in the nineteenth century, and how it envisions assisting the most vulnerable amongst Eastleigh's refugees. Apart from this historical link with its Jewish identity, at present the organisation seems to be Christian. MacArthur introduced himself as a 'born-again' Christian and acts as a counselling psychologist. According to MacArthur, his organisation assists approximately 400 refugees annually, especially from sexual minorities, by facilitating resettlement mainly to western countries such as Canada and the United States.

NGOs and CBOs like HRW, RefugePoint, MSF, *Ummah* CBO and HIAS are all addressing the issue of SGBV. The phenomenon seems to be part of the daily experience of women in Eastleigh. In some cases, however, false claims of SGBV are used as a pretext to flee Eastleigh for

a third country. This pretext underscores the omnipresence of *bunfis*, the eagerness to escape from the estate to a safe haven.

CONCLUSION

This chapter has presented the research on the contours and features of the human rights culture in Eastleigh. I found that there appears to be a thriving human rights culture in Eastleigh consisting of numerous national and international human rights NGO networks dealing with a large number of human rights issues related to children's rights, land rights, SGBV as well as family law-related issues. However, I focused primarily on NGOs and CBOs that work for refugees' human rights in Eastleigh.

The Nairobi Urban Refugee Protection Network (URPN), that focuses on refugees' human rights, represents some 25 organisations. Working within the context of national and international human rights documents and standards, civil society organisations such as described above not only assist the Eastleigh refugee community with legal aid, rights awareness-building and naming-and-shaming advocacy on their behalf at both local and international and national levels, but they also work on socio-economic rights, such as sustenance, by initiating food projects and projects that give access to small-scale business.

In Eastleigh, actual legal assistance and advocacy work on behalf of the refugees appears to be mainly organised by networks of paralegals. These paralegals are individual citizens, community leaders, and refugees who are trained *pro bono* by professional lawyers to monitor human rights issues. At the grassroots level, human rights violations are not only related to arbitrary detention and extortion, but relevant also to cases of children's rights, land- and family law, SGBV, and property and security issues. More than 40 community centres work through paralegals in Kamakunji county, of which Eastleigh forms a large part. Almost all paralegals are adherents of a particular religion. Muslims and Christians in Eastleigh appear to join hands in paralegal work. Their distinct Muslim and Christian identities do not seem to impede their participation and cooperation in society. On the contrary, they collaborate with adherents of other faiths in their joint advocacy of human rights. Through the voluntary work of paralegals, legal aid and human rights culture in general are brought to the community. Paralegals deal with cases without neces-

sarily bringing them to the often lengthy and expensive official court system. The women and men I interviewed, in their capacity of paralegals, community workers or human rights activists, implicitly or explicitly identified themselves as religiously inspired persons while advocating on behalf of human rights CBOs and NGOs.

The next chapter will look at whether – and if so how – faith-based organisation (FBOs) are participating in the human rights culture that already appears to be so vibrant in Eastleigh's civil society.

NOTES

¹ This group refers to the Arabic description of 'those who are going out', referring to an incident in the early days of Islam (657 CE). The Khawarij did not agree to a truce between the followers of 'Ali and Mu'awiyah, in a case concerning revenge for the killing of the fourth Caliph, 'Uthman (644-656 CE), seceding instead.

² Republic of Kenya in the High Court of Kenya at Nairobi Milimani Law Courts Constitutional and Human Rights Division Petition No. 19 of 2013 consolidated with Petition No. 115 of 2013. Document obtained through paralegal Abdulrazaq O. Nurain, 1 September 2013.

³ 35 Oromos, 15 Somalis, 5 Tigrinyas, and 3 Ogadeni were interviewed in partnership with NGOs who deal with SGBV, such as the German NGO GIZ/City Council Clinic in Eastleigh and the Refugee Consortium of Kenya (RCK), through an Oromo Women's Group and community health workers.

6

Eastleigh's Faith-Based Organisations

INTRODUCTION

To overcome the constraints of official policy-driven institutions in Eastleigh, I searched for organisations that are needs-driven. In the previous chapter I have described how Eastleigh's civil society attempts to meet the needs of its local residents in the political, legal and religious fields. The numerous human rights NGOs and CBOs in the estate appear to be concerned about basic human worth and dignity. Without searching for any specific religious features in Eastleigh's civil society, we have already come across networks of Christian and Muslim paralegals and community-based religious organisations. In the present chapter I will focus on religious NGOs, so-called faith-based organisations (FBOs). Of the many FBOs that are active in Eastleigh, I have chosen four for closer scrutiny: two Christian and two Muslim organisations. I will explain why I have selected these organisations in particular and will introduce the national or international organisations to which these FBOs are affiliated as well as their respective activities and programmes.

After defining the multifaceted phenomenon of FBOs in general terms, I will classify them into distinct groups according to a particular scheme. One of the criteria for categorising FBOs is their relationship with external organisations. Of special interest to this study, and to the context of Eastleigh, is the question of how issues concerning human rights determine the FBOs' extramural interreligious relationships. This will bring us closer to an answer to the last sub-question: do Eastleigh's faith-based organisations actually address, contest, redefine and seek to transform Christian–Muslim relations in the light of human rights culture?

DEFINING AND CLASSIFYING FBOs

One recent account describes Kenya's civil society sector as 'one of Africa's bravest and most vocal' (Allison 2016). Kenya's civil society comprises countless nongovernmental organisations such as international and national NGOs in all their distinct shapes and forms (cf. Murungi 2009: 42), including community-based organisations and faith-based organisations. Kenya's diverse civil society reportedly includes more than 300,000 organisations, approximately 30,000 of which are faith-based. Other possible ways of referring to faith-based organizations are *faith-inspired* organisations (Marshall 2017: 51), religious, or more specifically, Muslim and Christian non-governmental organisations. FBOs or faith-inspired organisations are generally considered an integral part of Kenya's civil society, though some prefer to see them as a distinct category (Ibid.). In this study I will make a clear distinction between Kenya's NGOs and FBOs without separating them. Some types of FBOs do not meet the criteria for other organisational categories, such as NGOs, CBOs, charitable organisations or private organisations. 'Many are small and informal enough to fall below various statistical and legal radar screens' (Ibid. 52). Other FBOs, however, such as Christian World Vision and the Muslim Islamic Relief, play a dominant role in Kenya's civil society. Non-religious organisations, like USAID, implement projects with the involvement of local FBOs. The great diversity of FBOs in Kenya makes it challenging 'to craft a single narrative covering all their histories, activities, and social influence' (Ibid. 53).

Gerard Clarke and Michael Jennings have defined an FBO 'as any organisation that derives inspiration and guidance for its activities from the teachings and principles of the faith or from a particular interpretation or school of thought within the faith' (Clarke & Jennings 2008: 6; cf. Mburu 2011: 68).¹ On the basis of this definition, I have selected the following four Christian and Muslim FBOs in Eastleigh for the purposes of intra- and interreligious comparison.

- (1) *St Teresa of Avila Eastleigh Parish*, a Catholic parish with its affiliated programmes: the Jesuit Refugee Service (JRS) and the Catholic Justice and Peace Committee (CJPC);
- (2) *Eastleigh Fellowship Centre* (EFC), a Protestant (Mennonite) FBO, with its activities and programmes, which are operated in association with

the Kenyan Mennonite Church, Eastern Mennonite Mission and, the Mennonite Central Committee (MCC);

- (3) The *Islamia School and Mosque Association*, an Islamic Sunni-Sufi FBO with its affiliated activities and programmes of an international school, a Sufi-centre and a mosque,
- (4) *Mama Fatuma Goodwill Children's Home*, an orphanage of Islamic, Sunni origins with its affiliated programmes and activities, including a school and kindergarten.

Selection criteria

I observed people and institutions coming to and moving out of Eastleigh over a period of five years (2009-14). Amid the fluidity of Eastleigh's population, I looked for religious institutions that appeared to have stood the test of time and thus provided continuity. All four selected FBOs originated before the 1970s, while two of them dated from the early twentieth century. The four organisations were established at least two decades before the huge influx of migrants and refugees since 1991, as described in Chapter 4. In addition to the criterion of continuity, the four chosen FBOs were selected from different traditions and denominational backgrounds: Catholic and Protestant within the Christian tradition, and Sunni and Sunni-Sufi within the Islamic tradition. Furthermore, the four selected FBOs appeared to include charitable, educational, and other communal agencies with services and outreach programmes, such as religious endowment (*waqf*), schools (*madāris*), and agencies like the Jesuit Refugee Service and the Mennonite Central Committee. How do these FBOs relate to one another in terms of diapraxis and in the realm of human dignity and rights?

Other more practical reasons for selecting these four FBOs were political issues, language, accessibility and security-related issues. In the political and geopolitical context of the so-called war against terrorism, building mutual trust in the field of interreligious relations is challenging, particularly in places such as Eastleigh. Many Somalis who settled only recently in the neighbourhood appeared not to speak English, but primarily their native language. Especially after the Kenyan army's incursion into Somalia in 2011 and the Westgate attack, security issues made it difficult to enter Eastleigh (cf. Carrier 2016: 20). The four FBOs selected

appeared reasonably accessible regarding their openness to receive visitors, the language spoken, of infrastructure and of security precautions.

An FBO typology

The theologian Ronald Sider and Heidi Unruh, director of a development project in Hutchinson (USA), have criticised the current ‘catch-all’ terminology concerning faith-based organisations. They developed therefore a typology of FBOs, based on specific religious categories (cf. Clarke et al. 2007: 6).² According to the authors, this categorisation can contribute significantly to research on the role of FBOs in addressing social problems and in seeking ‘common-ground solutions to and dialogue about societal challenges’ (Sider & Unruh 2004: 110). Their typology has proved to be very helpful in my research about the possible contribution that interreligious dialogue can make by addressing social problems, and in my investigation of the role of FBOs in finding ‘common-ground solutions’. The typology was based on 15 case studies of Protestant congregations in Philadelphia, USA. The authors distinguish six categories of faith-based organisations or programmes: (1) faith-permeated organisations; (2) faith-centred organisations; (3) faith-affiliated organisations; (4) faith-background organisations; (5) faith-secular partnerships, and, (6) secular organisations. In this study, I will borrow this typology, which has been developed in a mono-religious (Christian) setting, and will apply it to the four FBOs selected in the interreligious context of Eastleigh. In this religious setting, only the first four mentioned faith-based categories will be applicable since the categories five and six have a more secular orientation. First, I will describe the typology in broad outlines (Sider & Unruh 2004: 109-34).

In *faith-permeated* organisations (1), the mission statement and other self-descriptive texts are explicitly religious. The controlling board, staffing, support and practices are all driven by religion. If the organisation is affiliated with an external entity, this entity is religious too. There is a religious environment reflected in the name of the organisation and in the religious symbols in and on its building. Faith-permeated organisations perform acts of compassion and care, and in return they expect the beneficiaries to participate in the religious discourses and activities. Engagement with religious content is required, ‘integrated-mandatory’ for the programme’s effectiveness in terms of experience and change.

Faith-centred organisations (2) were originally founded for religious purposes. Their mission statement and other texts contain explicitly religious references. Most of the controlling board and staff members share the organisation's religious affiliation. External contacts and funding are mostly religiously motivated. Faith-centred organisations incorporate explicitly religious messages and activities of care and compassion but are designed in such a way that the participants can opt out of the activities and still receive the benefits of the programme's services. The religious environment is usually obvious in the name and symbols within and outside the building. The approach is 'integrated-optional or invitational' with a strong hope that the participants will undergo religious experience and change.

The programmes of *faith-affiliated* organisations (3) contain few explicitly religious messages. The staff and activities affirm religion in a general way, but spiritual convictions may be shared with participants only implicitly, or through informal religious conversations. Faith-affiliated programmes may have the intention to convey a religious message through nonverbal acts of compassion and care. These organisations' affiliated external entities are sometimes religious groups, but not necessarily so. Religious practices are optional and are not obvious in the daily running of the organisation. Religious symbols can only be found rarely in the organisation's buildings. The programme is 'invitational, relational, or implicit'. There is little expectation that explicitly religious experiences or change is necessary for the desired outcome. Some organisations believe that acts of compassion and care in themselves have an implicit spiritual impact that contributes to outcomes.

Faith-background organisations (4) tend to look secular and act in a secular way, although they have historical ties to a faith tradition. Religion may motivate the staff or the board but is not a consideration per se in the selection of personnel or board members. Sometimes these organisations are affiliated with religious entities both this is not always the case. Religious practices are rare and peripheral to the organisation. Religious symbols are there but are not shown explicitly. Religious activities, resources and material may be available to beneficiaries who explicitly seek them. The religious component is seen primarily in the motivation of individual staff members. There is no expectation therefore that religious experience or change is needed for the desired outcome.

Faith–secular partnership and *secular* organisations, the fifth and sixth categories in Sider/Unruh’s six-class typology, have little or no affiliation with religion in terms of staff recruitment or desired outcomes of programmes or activities. While there is respect for religion in faith–secular partnerships, depending on the background of the staff and beneficiaries, in a secular organisation, religious commitment as a factor in hiring staff or in terms of programme or the content of activities, is considered to be improper. I will not take faith–secular and secular organisations into account in my classification of FBOs, since the spiritual factor has become irrelevant for them, whereas it is far from irrelevant in Eastleigh.

In order to classify and compare the four FBOs selected, I will (1) give a brief description of the history of each of the four organisations, (2) describe their programmes, activities and services that they provide to the wider community, and (3) highlight their external diapractical relations with other organisations. I will add each section with a tentative description of traces of a possible human rights culture in the FBOs in question (4).

TWO CHRISTIAN FBOs

St Teresa of Avila Parish Eastleigh

In Sider’s and Unruh’s typology of FBOs, St Teresa Catholic Church can be defined as a *faith-centred* organisation. Located about four kilometres from Nairobi’s city centre, St Teresa of Avila Parish Eastleigh is a landmark building that is hard to ignore. Huge buildings and a high grey tower hint at an extended compound. It includes a statue and a shrine, and other religious paraphernalia can be found everywhere. St Teresa Catholic Church has been established as a place of worship by the Holy Ghost Father in 1925 (personal notes of Father Wilfred Kamau, which he handed me during an interview on 1 September 2013), indicating the historical link with the estate from its inception. In 1930 the first building, currently known as the Old Hall, was erected as ‘Eastleigh mass centre’. The current main church building was constructed in 1947. Since the early 1950s, St Teresa’s Church has been particularly active in Eastleigh as an FBO by introducing health and educational assets to the estate. Two schools were founded in the proximity of the Church in 1953: a girls’ school by the Loreto Sisters and a boys’ school by the Holy Ghost Fathers, both under the patronage of St Teresa’s Catholic Church. In

1997 St Teresa's dispensary was opened opposite the church to cater for the local poor. Catholic Sisters of St Joseph wearing habits and veils still professionally manage the place, as I was able to observe during my visit. The Sisters of St Joseph is an inland congregation, founded by the Spiritans. They originally come from Bura, and later settled in Mombasa. In 1978, the White Fathers of Africa took over the parish from the Holy Ghost Fathers. Ten years later, the Sisters of St Joseph from Mombasa joined the White Fathers at St Teresa's in order to work at the parish dispensary and at St Joseph's Nursing Home Hospital. In 2003 the White Fathers in their turn handed over the parish over to the Archdiocese of Nairobi. In 2005, the present Fr. Wilfred M. Kamau was appointed to the growing parish. School classrooms on the premises of the church compound had been completed in the meantime. With three well-attended church services every Sunday, the church attracts people from the surrounding slums of Matare as well as from the wealthier part of Eastleigh. Throughout the week, numerous group activities are organised to assist the wider community both materially and spiritually.

St Teresa's Catholic Justice and Peace Committee

In the context of my enquiry into the existence of human rights culture, it is of special interest to note that St Teresa's Church, apart from its educational and health care assets, provides services to the surrounding community through its Catholic Justice and Peace Committee (CJPC), and through the Jesuit Refugee Service (JRS). These organisations offer activities to residents of Eastleigh and of the nearby Matare slum area. Through their programmes, St Teresa's church provides a safe haven to many people of different walks of life amid a turbulent context. CJPC is part of an international FBO. Established in 1967 as one of the outcomes of Vatican II, the Pontifical Council for Justice and Peace implements the social teachings of the Roman Catholic Church by promoting social justice and human rights. Alongside action-oriented work on human rights violations, the council endeavours to develop a deeper understanding of the theological perspective on human rights. It works through local Justice and Peace Committees around the world, thus linking the council with international and local FBOs (Berkeley Center 2011). St Teresa's CJPC is one of the local branches of this international FBO with clear links to a human rights approach. The CJPC has an office on the compound of St Teresa's Catholic Church, which over-

sees 32 members linked to 8 Catholic parishes. As pictures on a notice board at the church's entrance show, one issue that is high on the CJPC's agenda is countering the practice of human trafficking, especially with regard to the abduction of children at the parish entrance. Much of the CJPC's work is related to security issues or 'vigilance' on the ground, with an emphasis on local youth. As far as extramural relations are concerned, there is continuous communication between the committee and the police district officer concerning robbery and child abuse cases. There are regular interreligious meetings at 'Eastleigh Community Hall', where chiefs, imams, the Catholic Justice and Peace Committee, and other community leaders discuss issues regarding security with police officers.

CJPC's chairman, Peter Musembi (whom I have already introduced in the previous chapter) and other members are trained as paralegals (interview, 27 August 2013). According to Musembi, Muslims and Christian paralegals exercise the role of reconcilers in the community in matters regarding local security. In the villages, the CJPC co-organised *baraza* meetings (local public forums) to underscore the importance of the right to vote in times during the recent elections in 2013. CJPC members regularly attend workshops organised by the 'Federation for Women Lawyers of Kenya' on women's rights issues. These address women's right to divorce and the girls' right to education in particular. According to the CJPC's chairman Musembi, 'people think there is no use of sending their girls to school, since they are going to be married anyway'. CJPC activists like him often combine their role as committee members with their work as paralegals, dealing with human rights issues at a local level. Their primary concern seems to be security issues, especially the prevention of child trafficking and the safety of the parishioners and of co-citizens of the wider community. Awareness-building in relation to child and land rights, in particular, appear to be helpful in pursuing the CJPC's work. Members regularly update and expand their knowledge about human rights by attending workshops of a professional organisation such as the Federation for Women Lawyers of Kenya. These workshops deal with family-, and gender-related issues for instance.

St Teresa's Jesuit Refugee Service

Under the supervision of St Teresa's, in addition to CJPC, the Jesuit Refugee Service (JRS) is another prominent international FBO that is

locally active in Eastleigh. In this case study, I consider both CPJP and JRS to represent two separate international FBOs falling under the faith-centred FBO of St Teresa's in Eastleigh. The Jesuit Refugee Service was established in Rome in 1980 by Father Pedro Arrupe in his capacity of Superior General of the Society of Jesus. JRS's mission is intimately connected with the mission of the Society of Jesus (Jesuits) to serve humanity on the basis of faith and to promote justice in dialogue with other cultures and religions. JRS is designed as a spiritual and practical response to the plight of refugees. The mission of JRS is to include persons who have been driven from their homes by conflict, humanitarian disaster or violation of human rights. In line with Catholic social teaching, JRS applies the expression 'de facto refugee' to many related categories of people who have fled but who might not have a 'de iure' refugee status ('The Charter of Jesuit Refugee Service', 2000).

The local JRS branch can be found in a small office of the old church building at St Teresa's. A sticker on the door of the office shows the JRS logo: a refugee family, together with the words 'to accompany, to serve, to advocate'. Psycho-social counsellor Mathias Mbisu explains that in the context of Eastleigh, 'there are many tendencies of hopelessness, helplessness which could easily lead to depression. We are helping in the best way possible by accompanying, serving and advocating for the rights of refugees' (Mbisu 2013). At the time of frequent grenade attacks, many refugee –, mainly Somali women – sought safety in the premises of St Teresa's. Some of these women made claims of continuous police harassment. These mostly Muslim refugees are free to join the already religiously mixed and psycho-social groups that JRS hosts. Other women who have joined are refugees from DRC, Burundi, and South-Sudan, who are almost all Christians. According to Mbisu, in the religiously mixed self-help groups that JRS organises, 'the people assist one another by coming together and sharing their past and present trauma'. In this way, the JRS responds to the plight of the Eastleigh refugee women who come from different religious backgrounds. The JRS's approach is mainly to accompany them through counselling sessions in the context of self-help groups. The service part of the JRS's approach consists of an emergency food programme and medical assistance. Most of the time the small JRS office is in fact packed with food and medical supplies that are distributed to the needy on a weekly basis. Mbisu and his colleagues are also involved in income-generation activities by assisting the refugees

with rent payment and loans to start off small businesses in Eastleigh. In this way, JRS supports these women by providing their families that are often dependent on them. Some of these businesses have become quite successful, as I witnessed in Eastleigh's many marketplaces (cf. Ritchie 2014).

JRS's advocacy shows the organisation's effort to further its clients' human rights. When the police came to Eastleigh to conduct house-to-house searches and arrests (as described in Chapter 4), JRS engaged with partners such as Kituo and the Refugee Consortium of Kenya (RCK) to seek legal intervention to help protect refugees against harassment and arbitrary arrest (Mbisu 2013). At the same time, JRS organised *barazas* to educate the wider Kenyan community on issues of coexistence with the mainly Somali refugee community. According to Mbisu, 'Many of the locals were angered by the recent deaths because of bombs and grenades attacks in the area which they attributed to refugees... Most of the Kenyans didn't know the plight of the refugees and hence we took the opportunity to educate them' (Ibid.). In a more formal interview (interview, 16 October 2013), Mbisu told me about the JRS's connection with St Teresa's Parish. 'We used to call our projects Parish Outreach Programs (POP), nowadays we call them Urban Emergency Programs'. Despite the change of name, JRS considers itself primarily connected to this parish although it retains its links with the international organisation. Funds for the projects partly come through the parish priest, who is responsible for the day-to-day running of the projects at the church. JRS is closely related to other human rights NGOs, such as Refugee Consortium Kenya (RCK) and the UNHCR. After first contact, members of JRS visit refugees at home, Mbisu says, 'without telling him beforehand, in order to check the data they give us. Sometimes there are more people dependent on the refugee than she tells us, making the situation more urgent. The home visits are sometime tricky in terms of security. You cannot predict always the circumstances under which they are living and with whom. Organisations like the UNHCR and others are not able or willing to do so. We go beyond where others go'.

By way of psycho-social counselling, JRS advises refugee self-help groups like those initiated by the Somali Muslim refugee women. JRS supports them with financial advice, food, and small business development in Eastleigh. On different occasions,³ some of these women spontaneously organised focus group discussions for me. A former profes-

sional midwife from Mogadishu, Aisha Lasso, described herself as a councillor and 'trailblazer'. Together with Bunni, I met with two of Ulusso's groups on a number of occasions: the *Women at Risk Group* and the *Single Mother Group*. She has also organised another group called the *Vulnerable Group*, consisting mainly of prostitutes and numbering over 40 Somali women. Besides having to cope with war traumas and health-related issues, these women suffer from all sorts of violence, such as domestic violence, child abuse, the medical consequences of female genital mutilation (FGM), and forced divorce. JRS continues to offer material and psychological assistance to these Muslim women and to other refugees.

According to the description in Sider and Unruh's typology of FBOs, St Teresa's Catholic Church can be defined as a *faith-centred* organisation. Its mission is clearly Christian, the management is in Christian professional hands, and Christian symbols are shown through statues, a prayer shrine and other paraphernalia. The church as such seems to give priority to its own constituency at Sundays services and activities during the week. Its educational and health care activities, however, testify to the parish's commitment to the wider community in Eastleigh, without taking into account their beneficiaries' worldview, status or financial position. The international FBOs of CJPC and JRS are closely affiliated to the parish's outreach. These organisations' mission statements are cast in terms of 'social justice', the 'common good' and 'human rights'. In practice they collaborate with other local Christian and Muslim communities. Somali Muslim participants of both JRS programmes can 'opt out' of the religiously inspired activities and can still expect to receive the benefits of the programme's services. The approach is therefore 'integrated-optional or invitational' as in Sider and Unruh's description of this type of FBO. The FBO of St Teresa's, including the international FBOs of JRS and CJPC have a number of external relations with both religious and secular organisations. Moreover, through the agencies of CJPC and especially JRS, St Teresa church clearly participates in what we have defined as human rights culture. The plight of refugees in particular is taken extremely seriously as a human rights issue. Human rights culture is shaped through practical programmes on the ground such as food distribution, assistance in setting up small businesses, mixed self-help psycho-social groups, and in addressing specific security issues in an interreligious and practical setting.

Eastleigh Fellowship Centre (EFC)

The second FBO I discuss is the Eastleigh Fellowship Centre. In Sider and Unruh's classification, Eastleigh's Fellowship Centre (EFC) is a *faith-affiliated* FBO. Eastleigh Fellowship Centre is an FBO operating under auspices of the Mennonite Central Committee (MCC) and the Kenyan Mennonite Church (KMC). The Mennonite Church, named after its Dutch founder Menno Simons, broke away from the Protestant reformers in 1525. From its inception, the Mennonite movement has been known for its desire to separate church and state, and to resolve conflict through pacifism, hence its members reputation of 'experienced peace-makers'. '[T]he memory of outsiders' attempts to change their own lives gives Mennonites the keen ability to respect other cultures and not to presume to interfere in the lives of aid recipients' (Dicklitch & Rice 2004: 663). Mennonites have long been involved in refugee movements, in most cases as a consequence of war situations. The USA-based Mennonite Central Committee (MCC) has been particularly active in issues concerning development, human dignity and social justice. Founded in 1925, the Mennonite Central Committee (MCC) began in response to famine in Europe after the First World War. The MCC primarily focuses its aid on education and advocacy on behalf of anyone in need. As a faith-based international NGO, or FBO, MCC attributes its success in Africa to its holistic, grassroots approach and its focus on accountability and empowerment. Although 'development might take longer, it actually takes place, ensuring greater social justice, human dignity, and local ownership' (Ibid. 660). At present, MCC is contributing to development programmes in 20 African countries, including Kenya. Its philosophical and programmatic focus is on 'accountability, its holistic approach to basic rights, and a "listen and learn"-approach which embraces empowerment and social justice' (Ibid.). A Mennonite employee at the Eastleigh Fellowship Centre, for instance, runs a bottom-up health programme in the field of HIV/Aids information and prevention (informal meeting with Rev. Fred Bobo at EFC, 2 November 2013). The global MCC programme's local ownership approach is clearly in evidence here. The MCC's 'holistic approach to basic rights' such as access to education and, its 'listen and learn' approach can be seen working out in the practice of the Centre.

The Mennonite Church presently has branches worldwide, including in East Africa. There are approximately 30,000 Mennonites in Kenya, most of whom live in urban contexts and under the auspices of Eastern

Mennonite Missions (EMM). EMM was active in the neighbouring country of Somalia, but, after the Communist revolution in Somalia in 1969, both EMM as well as MCC believed that the Mennonites could no longer serve in Somalia. As a consequence, when the Somali government in Somalia expelled the Mennonites in 1972, EMM and MCC were already considering relocating to Kenya (personal notes, courtesy of David Shenk, on file). By 1976, all Mennonites had in fact left Somalia. David Shenk, the founder of EFC, was sent to minister to Somali people in Nairobi. Shenk recalls that by the time the Mennonites had moved into Eastleigh, the area was already quite densely inhabited by Somali Muslims. The Mennonites rented an apartment that is presently owned by EMM and is now the Eastleigh Fellowship Centre. According to Shenk, the apartment building is located across the street from what was at the time a 'thriving Sufi mosque', and this 'lent itself very well to occasional dialogues and friendships between the Muslims and the Mennonites'. 'The Sufi mosque and the Christian centre were the meeting places for a community of Sufi disciples, on the one hand, and a fellowship of believers in Christ on the other hand' (Ibid.).⁴ In 1973, shortly after his arrival in Kenya, Shenk became a lecturer at Kenyatta University (KU) in Nairobi. There he became friends with a faculty colleague, Badru Kateregga, a Muslim from Uganda. As a corollary of their friendship they engaged in an academic dialogue which they published in book form, called *Islam and Christianity: A Muslim and a Christian in Dialogue* (Kateregga & Shenk 2004). In the mid-1970s, a Mennonite Muslim Ministries Council was formed to give guidance to the developing Mennonites' commitment to Muslims. Members of the Council were representatives of the different Mennonite organisations, the National Council of Churches in Kenya (NCCCK), as well as individual Muslim Somalis.

The EFC's activities and programmes

The Mennonites set up a reading and study room at the centre that later expanded into a facility that became the Eastleigh Fellowship Centre. The centre offers a ministry that continues to be appreciated by its beneficiaries, as the constant flow of visitors attests. I attended several church services on Sundays, especially enjoying the choir's high-standard performances. Residents of the surrounding community use the centre on a daily basis as a reading room, a sports centre, a resource for literacy, and a domestic science resource. The centre's premises are also used as a

church facility for the local Mennonite Church and for an Ethiopian evangelical church. The same church hall is often rented out for Somali weddings. In recent years there has been a strong commitment to meetings intended for Muslim and Christian youth. An important development is the Eastleigh centre basketball team, known as the *Menno Knights*, comprising of Christian and Muslim young men and women.

At the entrance of the EFC gate one can find the foundation stone laid by SUPKEM, the Supreme Council of Kenyan Muslims, in 1981. People pointed out this stone to me on several occasions as a sign of the close connections with the national Muslim community. EFC is known as ‘the Mennonite Centre’ in the wider community, and this fact does prevent the mostly Muslim Somali beneficiaries from attending its activities. The interactions between Christians and Muslims through sport and education appear to be cordial and friendly, as I experienced over the years. In hindsight, our Centre for Christian–Muslim Relations in Eastleigh (CCMRE) project could probably not have found a better place than EFC to start practising Christian–Muslim relations in context.⁵ From its early days, EFC has provided a location for Christian–Muslim dialogue. There are signs inside the building that lead to ‘The Dialogue Room’. Over the years many events have been organised there in which Muslims and Christians have met together to explore issues concerning interreligious encounters. This dialogue was intended to build relations of trust, mutual recognition and, practical exchange of services in the light of charity. When Muslim–Christian relations turned out to be fragile, the centre organised seminars on peacemaking in partnership with the ‘Islam in Africa Project’. This project is the forerunner of the All Africa Council of Churches (AACC) Programme of Christian–Muslim Relations in Africa (PROCMURA). According to Shenk, ‘[I]n contrast to the jihadism and conflict in southern Somalia, the Eastleigh Fellowship Centre peacemaking seminars teach to equip young people to be peacemakers rather than violent warriors’ (personal notes, courtesy of David Shenk, on file).

A key concern of EFC’s has been the growing number of refugees entering Kenya from Somalia. The Kenya Mennonite Church and MCC have become involved with refugees’ concerns in various ways. Most important has been the development of ‘peacemaking primers’, which draw upon traditional Somali peacemaking themes. The voices of Somali women, in particular, have always been quite significant in this field.

Most of the residents were and still are transient and thus view their stay in Eastleigh as temporary. The Eastleigh Fellowship Centre not only provides a place for the surrounding community but has also become a stronghold for Somali refugees in transit. EFC has helped a number of transient residents of Eastleigh to explore opportunities to migrate to North America, Europe, or other Eastern Africa countries.

In an interview (at Eighth Street Eastleigh, 11 October 2013) with the current director of EFC, David Amara, I asked him how the context of Eastleigh had changed since the time of his predecessor David Shenk. Amara highlighted changes in terms of the size of population of Eastleigh, the general features of the estate, and the issue of security. While the population of Eastleigh was relatively small in the 1970s and 1980s, it has increased dramatically since the early 1990s because the conflicts in Kenya's surrounding countries, particularly in Somalia. In EFC's early period, Eastleigh was predominantly a relatively wealthy residential area whereas at present it is primarily a business hub. And while Eastleigh was 'the place to be' in its initial stages, it has currently become a place where issues of security are of daily concern. One of the consequences of the safety concerns is the centre's policy not to publish material like brochures or newsletters or to be active on the Internet. 'We are purposely silent. The strategy has changed, but the mission is the same. We work with individuals, rather than with groups'.

EFC is owned by the Kenyan Mennonite Church (KMC) and was 'donated' to the EFC as a community centre. When I asked Amara how he would describe his organisation, he called EFC 'a community-based organisation, under the auspices of the KMC'. He further regarded EFC as being under the aegis of the more church-oriented Eastern Mennonite Mission EMM, rather than the more service-oriented Mennonite Central Committee (MCC). 'The MCC is disaster-oriented and directed to humanity as a whole. Our ideal is creating friendships with the individual members of the community which is totally Muslim'. This individual approach to Muslim users of EFC is not driven by the will to convert them in the narrow sense of 'saving souls'. According to Amara, EFC creates 'friendship with the youth basically through our services by means of activities of sports and education'. In these activities the mission of 'sharing Christ' is not conducted openly.⁶ 'There is no force to convert. We are, of course, not counting the converts as a yardstick to measure our project outcomes. No human being can be converted by another. We

only share the word and we sow the seed, but the outcome we leave to the work of the Holy Spirit'. Amara defines 'conversion' broadly in the sense of youngsters 'stopping doing radical things', such as prostitution and stealing. 'Conversion' in the sense of how some Muslims perceive it, namely apostasy (*ridda*), is a constant source of tension, and has caused a number of people to leave Eastleigh. According to Amara, '[p]eople can live together here in harmony; doing the same things, playing together; learning together. In the long run we are all human, we all need one another'. Amara contends that EFC is not only needs-driven. 'We are different from, for instance, the International Red Cross, [which is] disaster-oriented with humanity as its common ground. We have still to offer something extra by sharing Christ in practice. We evangelise through our services to the Muslim community'.

EFC mainly works through networks of youth organisations such as Somali Youth (YUSOM) and Kamakunji Youth Organization. EFC's focus on youth capacity-building is acknowledged by the USAID-linked Kenyan Transition Initiative (KTI), which subsidises equipment (sound systems, photocopy machines etc.) and the maintenance of buildings. There are close contacts with Christian organisations such as EMM, and with an independent church called Christ is the Answer Ministries. In addition, church services are held in the upper hall, which is rented by the Evangelical Ethiopian Church of Eastleigh, led by pastor Mebratu of the Oromo community. Thus, the Eastleigh Fellowship Centre (EFC) offers its facilities and services to both Kenyan Mennonite and Oromo Christians, as well as to Somali Muslims.

The EFC staff is almost all Kenyan, appointed by the board of the Kenyan Mennonite Church. Almost all EFC staff members work from a Christian faith perspective, but this Christian perspective is rather implicit in the daily educative and sports outreach activities. In terms of its outreach the programme is 'invitational, relational or implicit'. EFC, therefore, can be best understood as a *faith-affiliated* organisation in Sider and Unruh's typology. The distinct mission statements of the EMM (stressing 'mission' and 'evangelising') and MCC (emphasising 'development', 'dignity' and 'social justice') do not seem to conflict in practice. The EFC's services to the community 'have the intent of conveying a religious message through nonverbal acts of compassion and care', in Sider and Unruh's description of the implicit mission and vision of this type of FBO. The beneficiaries of EFC facilities are for a considerable part the

Kenyan Somalis and Somali residents of Eastleigh. EFC started in the 1970s as a project envisioning communal Christian–Muslim relations in Eastleigh. The special interreligious Dialogue Room at the heart of the building refers to this intention. In comparison to St Teresa's Eastleigh Parish, there are, however, hardly any symbols in the building that show this FBO's Christian identity.

Through its educational and recreational programmes, EFC aims at serving the wider, predominantly Somali Muslim community of Eastleigh. There are educational programmes at different levels, and English and Swahili language courses for all ages. The library and computer centre are freely accessible to everyone. The centre's predominantly Muslim beneficiaries can use all the facilities for symbolic fees and entry prices, while receiving professional assistance. In terms of *diap Praxis*, EFC certainly sets another example of how people from different faith communities actually live and work together rather than engage in discursive dialogue per se. For a number of refugees, EFC has always been a safe haven in a period of transit. In the past, EFC has helped some of these refugees to migrate to safe third countries. MCC has often been particularly instrumental in this regard. In the meantime, refugees who stay in Eastleigh are assisted by first-language courses in Ki-Swahili and English as a way of settling in Kenya. EFC's invitational and relational approach implicitly focuses on the human dignity of the wider predominantly Muslim community and sets another good example of an interreligious human rights culture in a local context.

TWO MUSLIM FBOs

Islamia School and Mosque Association

The *Islamia School and Mosque Association* sets a good example of the *faith-permeated* organisation in Sider and Unruh's typology of FBOs. It is one of Eastleigh's oldest FBOs. The history of the *Islamia School and Mosque Association* reaches back to the Indian Punjabi Muslims. The building was erected by the first waves of Punjabi pioneers to arrive in Nairobi in the 1940s, and perhaps even earlier. Basheer Mauladad, editor of the milestone book *Settling in a Strange Land: Stories of Punjabi Pioneers in Kenya* (Salvadori 2010), told me that the mosque might even slightly predate the 1930s (interview at Aga Khan University Hospital Nairobi, 14 December 2013).⁷ It might, therefore, be older than the landmark Jamia Mosque in

Nairobi's city centre, which was also built by Punjabi constructors. This historical connection is closely related to the construction of the Kenya-Uganda Railway. Recruitment of personnel needed for this megalomaniac⁸ project took place in India. The British army, operating under the auspices of the Imperial British East Africa Company (IBEAC), established in 1888, had occupied the sovereign state of the Punjab, 'the land of five rivers' in North-West India in 1849. In 1858 the British Crown assumed control over this part of the Indian subcontinent. Thousands of Punjabi soldiers were recruited for the planned Kenyan-Uganda Railway project from Rawalpindi, currently presently still a cantonment area in the twin city of Islamabad. In 1895, the protectorate administrative and commercial rule was enforced over East Africa, controlled from Bombay. In the same year, the IBEAC awarded the contract to build the railway to the engineer A.M. Jeevanjee from Karachi. He had already recruited a workforce from the Punjab (Chandan 2007)

During the First World War (1914-18), the British army recruited 120,000 Muslims and Sikhs from the Rawalpindi division in the western Punjab to work as overseas labourers in East Africa. In 1920, Kenya was declared a colony under the British Crown. Punjabi Muslims came in their thousands. They were the last group of Sunni Muslims to arrive in Kenya. Some of them had worked with the railway as administrative clerks, artisans or labourers. Another group was employed by the army and the police. Yet another group of Punjabi Muslims heard about business opportunities in East Africa and came to try their fortune. In addition to their trade skills, Punjabi Muslims also showed religious zeal by building a number of mosques with schools attached to them. One of these Muslims was Imtiazali, a businessman and a Sufi saint. His tomb can still be visited in the city centre of Nairobi; it is presently under reconstruction.⁹ During the first half of the twentieth century, Sikh and Hindu communities gathered around temples, and Muslims started building their mosques. The first mosque in Kenya was built by railway workers near the harbour of Kilidini, Mombasa, in 1896. As the railway advanced across Nairobi's plains, the Punjabi constructors came along with it. As a wandering people, they took their portable mosque with them. The small Kilidini Mosque was dismantled and re-erected in 1899 as the Jamia Mosque of Nairobi's railway headquarters in Muthurwa (Salvadori and Fedder 1989: 208). Inscriptions in Urdu – rather than the more common Arabic – can still be seen in the wooden ornaments of

this mosque. In 1922 the Jamia Mosque was demolished and replaced by a finer mosque, still a landmark in Nairobi's city centre, which served Muthurwa residents, at the time mainly Punjabi and Sufi-oriented Muslims. In 2008 the deserted site of the Muthurwa Mosque was officially given the status of a national monument.

Meanwhile, the Punjabis had moved to other areas in Nairobi. The early Punjabi settlers built two mosques, one in Eastleigh and one in Pangani (Salvadori 2010: 85). Under the name of Jamia Mosque Railway Landhies,¹⁰ the forerunners of the present Islamia School and Mosque Association ran the place. Punjabi employees had constructed other mosques along the railway all the way from Nairobi to Lake Victoria and beyond. Later they often attached schools to these mosques. In Nairobi, the Association was renamed the Jamia Mosque Railway Landhies & Islamia Primary School Association, comprising both the Pangani Mosque and the mosque that is currently known as Eastleigh's 'Third Street Mosque'. The architecture with its sculpture and calligraphy on the outside, as well as the religious paraphernalia inside, all bear witness to the association's Indian's past.

For a number of years in the early 1960s, a small health facility, the Abdullah Shah Free Dispensary, was attached to the mosque in addition to the school. This dispensary, to which local doctors offered their services, was open to the general public. A postcard of the mosque (Salvadori 2010: 87) showing the sign in Urdu in front of the mosque indicates the existence of the Abdullah Shah Free Dispensary. In the mid-1960s, Nairobi City Council took over management of the clinic.¹¹ In the late 1970s the Association of Schools and Mosques was also known as the Al-Momin Foundation. However, the Islamia School and Mosque Association, in what is now Eastleigh's Third Street, retained the name of the FBO that is selected for the present research.

Currently the school (*madrassah*) and mosque activities reach out to families in the surrounding community. This Sunni mosque, with its strong Sufi inclination, attracts Muslims from the vicinity of the association building. In addition to the mosque and the school, the association owns shops and other income-generating businesses in the street. In the mosque I encountered national and international entrepreneurs and other people, mostly of Somali origin, alongside local residents and refugees. Worshipers at the mosque include Muslims from Pakistani, Indian and Egyptian backgrounds, as well as from other countries in the Horn of

Africa. I visited this FBO's mosque and school over a period of five years.¹² In early 2013, I attended several of the *dhikr* (literally 'remembrance') services in the school building opposite the mosque. I was also invited to *'id al-adhā* celebrations (on 16 October 2013) at the mosque and at private homes.

On one occasion (on 17 February 2013), I observed how some 120 young people were crowded together in the school of the Islamia School and Mosque Association. The *dhikri*, as they call it, is one of several services held to mark the occasion of the *manlīd* season, which is observed in commemoration of the Prophet's birthday. The group belongs to the Qadariyya order, named after its founder Sayyid 'Abdul Qādir Jilāni. It is one of the oldest orders (*turuq*, sing. *tariqa*) and one that is especially popular in Somalia. On the occasion, proceedings were directed by four spiritual leaders, including Merabaqs Bunni. The leaders faced an enthusiastic group, as they sat behind a number of copper incense burners. The *dhikri* opened with the reciting of praise poems (*qasidāt*) to the Prophet and to the founder of the order. The presiding *sheikhs* chanted, while the audience, clad almost entirely in spotless white *jellaba*'s, joined in the refrain, accompanied at regular intervals by drumming on a *dhof* (drum). A number of other leaders constantly sprinkled the first rows of young men with rose water. As the distribution of perfume allegedly flown in especially from Saudi Arabia continued, the atmosphere created by the chanting and the drumming struck me as particularly harmonious and welcoming, even to me as a non-Muslim foreigner. In the immediate surroundings of the school and mosque, with the smells and noises that are typical of this overcrowded part of Eastleigh's business hub, I experienced these intramural *dhikri* spiritual gatherings as an oasis. The cleanliness, the scent and the melodious chanting and movement were fascinating. I observed how it gave the participants back some of their human worth in a context that is often described as a 'ghetto'. I experienced the enthusiasm of the young people, the radiance on their faces as a celebration of the basic human dignity. According to Santos, comparable to mysticism in Christianity, Sufism in Islam is a possible contribution of progressive religious experience to strengthen, expand and radicalise human rights. 'An intensified sense of sharing and of belonging is thereby generated that, if put at the service of struggles of resistance and liberation from oppression, may contribute to strengthen and radicalize the will for social transformation' (Santos 2015: 79).

Later in 2013, I was invited to *ʿid al-adhā* celebrations at the mosque and at private homes of the mosque members. *ʿId al-adhā* or *ʿid al-kabīr*, (literally ‘the big feast’), commemorates Abraham’s, or Ibrāhīm’s submission to the divine by his willingness to sacrifice his son, as recounted in the Qur’an (cf. Q. 37: 99-107). The rituals surrounding this commemoration symbolise what *islām* (lit. ‘submission’ to the will of God) stands for. The exact date of the start of the ritual festivities is related to the first appearance of the moon. The first sighting of the moon depends on the judgement of rival authorities in different places and appears quite often to be a sensitive topic within the Muslim community. Sheikh Merabaqsh Bunni informed me about a recent controversy on the exact date of the beginning of the celebration. In Eastleigh’s *Hidāya* (lit. ‘guidance’) Mosque, the Chief Khadi Sheikh Ahmed Muhdhar was specially invited to solve the matter. According to one group of Muslims the event should be in line with the pilgrimage, *al-hajj*, which takes place in Mecca in Saudi Arabia. According to this group, Kenyan Muslims should follow the sighting of the moon in *al-hijāz*, where the holy cities of Mecca and Medina are located, and where the *al-hajj* rituals are performed. Another group of Muslims, however, many of whom consider themselves to be Sufis, detach *ʿid al-adhā* from the rituals of *al-hajj* in Saudi-Arabia. They support the chief Kadhi of Kenya in his preference for a local moon sighting in Kenya (‘Chief Kadhi seeks powers’, 15 October 2013). During the 2013, celebrations, however, the media followed the Saudi religious calendar and covered the event the day before, much to the chagrin of the members of the anti-Wahhābi, the more Sufi-affiliated Islamia School and Mosque Association.

On the first day of the festival, both Muslims and non-Muslims around the mosque gather in their best clothing. Food is divided and money is distributed among the poor either privately or through the mosque *waqf* (religious endowment) organisation. In the courtyard of the mosque small goats are sold for 5,000 Kenyan shillings (at that time around 45 euros) each. As soon as the men have completed their prayers, the slaughtering takes place. Every person that can afford to buy a goat is expected to do so, at least one per extended family. The slaughtering begins while somebody from the household recites: ‘There is only one God and this animal is sacrificed to this God’. The skin and the intestines are given either to the poor or to the butcher. At home the meat is further prepared and divided into three equal parts. One part is for the family

itself. Another third part is reserved for friends and the last part is offered to the poor. At lunchtime the meat is consumed, ideally together with the poor and with single people. The rest of the day people are occupied bringing the meat to neighbours or the less privileged people who congregate around the mosque. Several weeks before the festivities, I had already witnessed how Somali female refugees were looking forward to the event, even suggesting to Christians that they should perform the same act of charity at Christmas time. For these women *ʿid al-adha* represents a period during which they receive special attention, even care, from the mosques and churches, underscoring the ‘pro-poor’ attitude of these FBOs, comparable to the charity exercised during the feast at the end of the month of *ramadhān*, where Muslims observe their thirty days of fasting (*sawm*), *ʿid al-fitr*.

During an extensive semi-structured interview (16 November 2013) with Rab Nawaz Siddiqui in the presence of Sheikh Merabaqsh Bunni, I asked Siddiqui about the services the Islamia School and Mosque Association provides to the wider community. Siddiqui is the Qur’anic teacher and general overseer of the association. We met him while he was teaching 25 young people sitting on the ground in two rows, as they memorised the entire Qur’an in order to become *hufāẓ* (sing. *hāfiẓ*), or ‘guardians’ of Scripture. These children – all boys, in ages ranging from 6 to 18 years – are international boarding students who come to Eastleigh for approximately three years. Some of them are orphans. The mosque’s *waqf* fund provides for learning materials such as books, for clothing and for fees as part of the students’ all-inclusive lodging. The income for this charity is raised from the profit made by the eight shops underneath the mosque and by contributions – obligatory (*ẓakāt*) and voluntary (*sadaqāt*) – from the members of the association, some of whom are successful business people. The beneficiaries all have some relation to the mosque, either directly or indirectly. Yet, as I described above, no distinction seemed to be made during *ʿid al-adha* and other religious festivals, between mosque members and people from outside the association. When I asked Siddiqui about relations with other organisations in Eastleigh, he mentioned Muslim and non-Muslim organisations such as Anjuman Himayate Islam,¹³ the Young Muslim Association, the Pangani Mosque, and a number of other NGOs. They all seem to work on behalf of their own constituencies. Then I asked Siddiqui whether the Islamia School and Mosque Association also assisted refugees in particular. According

to Siddiqui, the association does not target refugees as a special group, since that has become 'a political issue nowadays. We don't ask about the status of those we assist, we just help'. He thus referred to the situation of refugees as a political issue, whereas the association's intention is to assist people irrespective of their 'status'.

As has been shown, the Islamia School and Mosque Association has a rich history that can be traced back to the earliest colonial history of the Kenyan-Uganda Railway; it is rooted in the Punjabi, currently Pakistan. The mosque's Sufi shade of Islam is well-known in the area. The mosque displays a pro-poor attitude to the wider community, which is particularly evident on occasions such as *'id al-fitr* and *'id al-adha*. The Islamia School and Mosque Association can therefore best be described in Sider and Unruh's classification as a *faith-permeated* organisation. The mosque's external artistic appearance is in an attractive Indian style. Its pro-poor activities seem to be directed primarily at beneficiaries of the mosque's own community and are integrated in its own religious routine. However, the association claims to provide assistance indiscriminately to Muslims and non-Muslims alike. As I observed, most of the time services were provided to its members only. Extramural relations with other organisations seem to be limited. Religious programmes such as *dhikri* and *'id al-adha* bestow human dignity on faith adherents and others, albeit often implicitly. The engagement with the religious content is required – 'integrated-mandatory' – for the programme's effectiveness in terms of experience and change.

Mama Fatuma Goodwill Children's Home (MFGCH)

Mama Fatuma Goodwill Children's Home is an orphanage on Second Street, Eastleigh. In Sider and Unruh's classification it can be considered a *faith-background* FBO. In its brochure, Mama Fatuma Goodwill Children's Home describes itself as 'a charitable and humanitarian organization' registered with the National Council for Children Services (NCCS) under the Ministry of Gender, Children and Social Development. Orphaned children are protected under the Children's Act of 2001. Children from neighbouring countries are referred to the home by the United Nations High Commissioner for Refugees (UNHCR). Children who are treated 'in conflict with the law' are to be 'rehabilitated'. Orphans are also sent to the home by the Children's Department of the above-mentioned ministry. The home respects children without regard to their

religious and cultural backgrounds. It works in the spirit of the child rights act such as the UNCRC.

In 1966, the now defunct Kenyan Women's Organisation established a training institute for physically handicapped children in Eastleigh that eventually became a residential home for orphans and vulnerable children. Until her death in 1997, Mama Fatuma Gullam – of mixed Kenyan and Pakistani descent – led this institute, which started for only a limited number of children in a converted house. At present the home shelters over 85 children of ages ranging from 1 month to 18 years (Mama Fatuma Foundation n.d.-a, SUPKEM website and leaflet). After Fatuma Gullam's death, the Mama Fatuma Goodwill Children's Home fell into neglect as a result of mismanagement. Six months later, the Government of Kenya, through its Department of National Children's Services, intervened, and at the recommendation of the Supreme Council of Kenyan Muslims (SUPKEM), appointed a professional board of trustees to manage the orphanage. In 2007 the Mama Fatuma Foundation was founded and registered as a public charity in Pennsylvania (USA) by a former volunteer at the orphanage (Mama Fatuma Foundation n.d.-b).

Mohamoud Mohamed Sheikh is the present secretary of this FBO's managing Board of Trustees. I learnt more about the recent history of the home in an extensive interview with Mohamad Sheikh, and Hiribae, the daily manager. Mohamed Sheikh referred to the brochure, when describing the start of the home by Mama Fatuma as 'a three bed-room apartment for just six children. Now it sometimes has over 100 children, far overstretching the capacity of the building' (interview, 13 September 2013). As a representative of the board, Mohamed Sheikh stressed the watershed in management after Mama Fatuma's death in 1997. He mentioned her relatives' mismanagement of the home after her death and how funds provided by the British High Commission, SUPKEM and the Government of Kenya helped to effect a shift compared to the recent past. As a member of the National Council for Children's Services (NCCS), he underscored that the home is no longer a *madrassah*-like building as it was in its early days. 'Now we are a charity organisation among other charity children institutions'. Mohamed Sheikh repeatedly underlined the relevance of the education which the home offers to boys and girls who, as a result, have often had job opportunities at several, sometimes prestigious, places in and outside Kenya.

The home's programmes are as follows, (1) the children's centre residential services, which support orphaned and destitute children, (2) outreach services, home-based care and family support for families with vulnerable children in the Eastleigh community, (3) a computer and vocational training centre, 'investment in education is the "silver bullet" for poverty eradication', and (4) university partnerships. 'We partner with leading universities in and out of Kenya for the mutual benefit of our children and the student volunteers'. The home is involved in train-the-trainers programmes such as capacity-building on child rights, HIV/Aids programmes and advocacy programmes. Refugee children from Eastleigh, or 'non-accompanied minors', as they are referred to by the UNHCR, from neighbouring countries are given medical services, education and other services to meet basic human needs. The home is active in four categories of children rights: the right to (1) survival (food, clothing and shelter), (2) non-discrimination and development (education, vocational training and spiritual nourishment), (3) protection (health services, prevention of harmful practices, counselling), and (4) participation (children clubs, sport, and recreational activities) (leaflet).

From the outside, from the street, only a single sign hints at the function of a building that does not obviously look like a home for less fortunate minors. The sign with the *basmalah*¹⁴ at the entrance clearly shows the institution's religious background. However, inside the building only a few symbols point to a religious identity. The picture of the founder Mama Fatuma can be found everywhere. At the reception there are certificates of appreciation from the Kenyan Government, and pictures of former President Kibaki visiting the place. There are pictures from well-wishers from the USA and the Netherlands. The same pictures and certificates can be found in the manager's room alongside a 'Good Samaritan Award' granted by the former Speaker of the Kenyan National Assembly, Kenneth Marende, who happened to be a member of the "Jesus Breakthrough Assembly", one of Kenya's independent churches. Over the years, the British Council has also collaborated in the setting up of a Computer Lab by USAID and the USAID-linked Kenyan Transition Initiative (KTI). These organisations are indicative of the orphanage's extensive network of external relations. The children's home also hosts a number of human rights NGOs on its premises. We have already encountered some of these in the previous chapter. RefugePoint uses the home's facilities on a weekly basis for psycho-social groups for East-

leigh's refugees. Refuge Consortium Kenya (RCK) also coordinates its activities on behalf of the refugees from the home, which is strategically situated and generally known as trustworthy. According to the manager, also other human rights NGOs – such as the Hebrew Immigrant Aid Society (HIAS)¹⁵ and HESHIMA Kenya¹⁶ – also operate from the children's home.

When I asked the home's day-to-day manager Hiribae about the organisation's identity, he often referred to its humanitarian mission. 'We are affiliated with Islam, but if our identity were only Islamic, some services we could not offer' (conversation, 16 September 2013). He mentioned the income-generating activities in this regard, such as renting out a conference hall to human rights NGOs, and services to the community such as the cyber café and a tailoring vocational training centre.

Said Mohamed is a teacher of religion (*maalim*, Ki-Swahili) at the home. He teaches Islamic subjects such as *akblāq* (ethics), *sirah* (the Prophet's biography) and *'ulūm al-qur'ān* (Qur'anic sciences) on weekends and during holidays. He confirmed (conversation, 16 September 2013) what Muhammed Hiribae said about the Islamic identity of Mama Fatuma's Goodwill Children's Home: 'We are there for humanity. The religious lessons that I offer are optional, open for all the children, but non-Muslim children can opt out if their guardians wish so.'¹⁷ Mohamad Sheikh also stressed the home's mission and vision as a joint venture in behalf of for the community, talking in terms of capacity-building and civic education in an interreligious setting. He mentions the collaboration with organisations like the NCKK and the Interreligious Council. However, he was very critical of the 'American Evangelicals' as possible partners in Eastleigh, because of 'their way of operating' in the neighbourhood. The children's home's Board of Trustees consists of two other Muslims and two Christians who oversee the overall running of the home, while delegating the day-to-day business to the manager. Thus, as Mohamad Sheikh reiterated, 'Charity is a different issue. Faith is a different issue'. 'We are a charity, not a Muslim organisation. All faiths can come together in charity'. He demonstrated the shift in the management's focus from a private initiative to a registered foundation by taking a copy of the 'Children's Act 2001' from a drawer and placing it demonstratively in front of us on the table. 'This Act highlights the rights that accrue to children, including children's right to access good education and health care. It also seeks to protect children from defilement, child

labour, neglect and abuse' (Kamau 2013: 3). 'Mama Fatuma Goodwill Children's Home used to accept children without a court order', according to Mohamed Sheikh, but to prevent accusations of child trafficking 'we now only accept children through a court decision and unaccompanied minors that the UNHCR is presenting to us'. Recently, for instance, the UNHCR had sent the home a number of unaccompanied minors from Congo, all of them from a Christian background.

In Sider and Unruh's categorisation, Mama Fatuma Goodwill Children's Home can therefore best be understood as a *faith-background* organisation. The beneficiaries of the programmes are Muslims from the direct environs of Eastleigh. Other unaccompanied minors from surrounding countries that are sent to the home via the UNHCR come from different Christian denominational backgrounds. Mama Fatuma Goodwill Children's Home explicitly addresses Christian–Muslim relations in the light of human rights culture. The 2001 Children's Act, based on international children's human rights laws, is the criterion for the organisation's policy, in matters of admittance, internal governance, services and external relations.

CONCLUSION

In Sider and Unruh's typology of FBOs, the four selected FBOs in Eastleigh correspond to the first four of their six categories. The *Islamia School and Mosque Association* can best be defined as a 'faith-permeated' organisation, *St Teresa of Avila Parish Eastleigh* matches the definition of a 'faith-centred' organisation. The Eastleigh Fellowship Centre can be described as a 'faith-affiliated' organisation. *Mama Fatuma Goodwill Children's Home*, finally, can be described as a 'faith-background' organisation. Like Mama Fatuma Goodwill Children's Home, the Catholic Justice and Peace Committee and Jesuit Refugee Service at St Teresa's Parish, and specifically the MCC model that underlies EFC's activities, use an explicitly and implicitly human dignity-based human rights culture as a model of how to relate to adherents of other religions. Neither St Teresa's Eastleigh Parish nor Islamia School and Mosque Association explicitly refer to human rights culture. In practice, however, all four organisations described, either implicitly or explicitly, care for the dignity of Eastleigh's residents and for respect of their human rights without regard for their religious affiliations.

Sider and Unruh acknowledge the sometimes harsh criticisms that have been directed against FBOs. Thus, FBOs are often accused of their sometimes barely concealed proselytising agenda, or of reserving their assistance and support for their own constituency alone. I agree with Clarke and Jennings that the evaluation of the role that FBOs play needs to be more nuanced. In the case of Eastleigh, FBOs have been there for a protracted period of time, often longer than NGOs. I found that their role in Eastleigh's context should be acknowledged in terms of 'faith-based action' (Clarke & Jennings 2013: 360) and in the light of a sometimes rather latent, but still potentially vibrant human rights culture. The representatives of the four faith-based organisations investigated here are often personally driven by religious stimuli. In the case of the four FBOs selected, I showed how religious affiliation can add value and meaning that often provide spiritual motivation for concrete action at a local level. In the context of Eastleigh, where religion matters to the majority of its inhabitants, FBOs do make a contribution to the work of more secularly inclined NGOs.¹⁸ The four FBOs presented here appear therefore to redefine international legal standards by addressing violations of human rights through practical, interreligious action 'from below'.

NOTES

¹ Kenyan scholar Peter Mburu's extended definition of a FBO as 'one that identifies with characteristics such as: affiliation with a religious body, having a religiously explicit mission statement, receives financial support from religious sources, its recruitment of staff and board members is based on religious beliefs, and its decisions are influenced by religious values. However, a faith based organization may or may not be profit making but should at least be connected with an organized faith community' (Mburu 2011: 68).

² According to these authors, the six major types of FBOs in terms of international development are: representative/apex bodies, charities, development organisations, socio-political organisations, missionary organisations, and radical/terrorist organisations.

³ On 22 August 2013 at St Teresa's Church, on 27 August 2013 (at *Ummah* C.B.O.), and again on 18 September 2013, and 28 January 2014.

⁴ The mosque has at some point ceased to be a Sufi centre, as I discovered. Now the mosque is often referred to as having shifted to Wahabi Islam. Over the years I was able to contact only a few individual members of the mosque.

⁵ Since 2016 the CCMRE has moved to Mama Lulo's Ummah CBO at Second Street for reasons of convenience.

⁶ The EFC librarian Joseph Kwoma Ngola, who is training EMM personnel at the EFC, speaks in this regard about 'contextualised mission'. 'We teach ABCD, without mentioning Jesus, but we inspire, invoke admiration. If they ask you whether you are a Christian, you say "yes", and you continue teaching'. (Informal meeting at EFC, 2 November 2013)

⁷ Mr Basheer Mauladad passed away in February 2014. See article 'Basheer Mauladad: A Life of Service', *Daily Nation*, 4 June 2014 (on file).

⁸ In the Indian community the railway project is still referred to as the 'Lunatic Line'.

⁹ When visiting the site on 23 February 2014, we saw a huge building project being erected around the tomb.

¹⁰ 'Landhies' were barracks-like houses that were built in the railway residential areas, known as the Railway Landhies.

¹¹ "Diese kleine Ambulanzklinik war jedem zugänglich, wird natürlich besonders von der eigenen Community frequentiert und ging Mitte der Sechsziger Jahre in der Verwaltung des Nairobi City Council über", Sheikh-Dilthey 1974: 88. (Courtesy of Shaila Mauladad Fisher)

¹² We met two successive imams from Egypt, the current one named Sheikh Imam Ali. These scholars are sent free of charge by the renowned al-Azhar University in Cairo, Egypt. We paid several home visits to the school teacher and coordinator of mosque, Rab Nawaz Siddiqui from Pakistan. On a regular basis I met Mr Chaudry who occupied a room in one of the mosque annexes, recovering from injuries sustained during a violent robbery on his way to Eastleigh in January 2013. One of the last official visits was together with a group of ICMR students on 6 March, 2014.

¹³ '*Anjuman Himayate Islam* (urdu language) or "Organisation for the Propagation (Assistance) of Islam" is one of the oldest Muslim associations in the country, established in Nairobi in 1902 in order to spread the faith and to help the needy (the word *himayat* means 'assistance').' (Salvadori 2010: 103)

¹⁴ I.e., the prominent Islamic phrase, 'In the name of Allah, the most benevolent, most merciful', which is used as an invocation, or short prayer expressing praise to God, or asking God to bless an important person with his peace.

¹⁵ HIAS provides legal assistance to refugees and resettlement to third countries, especially Canada.

¹⁶ HESHIMA-Kenya is an NGO devoted to identifying, protecting and empowering unaccompanied refugee children and youth living in Nairobi through 'pro-

vision of specialized shelter, community outreach, informal education and economic empowerment programming? (Kamau 2013: 9).

¹⁷ In an interview held on 4 June 2014 with Mohamed Sheikh I learnt that the *madrassah* activities were cancelled at the premises of the home and that the Muslim children were directed to other places for their religious education. Mohamed alluded to the alleged linkage of the *madrassah* and radicalisation of the youth as it was debated in the media at that time.

¹⁸ Rick James has enumerated 10 potential added values that FBO have to offer alongside more secular, materialistic approaches from NGO (James 2011).

7

Localising Universal Human Rights

INTRODUCTION

At a global level, religion and human rights are often presented as unlikely allies. Especially in Asia and Africa, the concepts of religion and human rights seem strange bedfellows. But there is much more to the intersection between these two concepts than this image suggests, depending on the distinct international, national and local perspectives that are taken. The academic reflection on the intricate relationship between human rights and religion is voluminous, as the literature review has shown, addressing the compatibility between sacred texts or doctrines, and human rights. However, far less has been written about this relationship in everyday local practices. In this study I therefore moved beyond these compatibility debates to show a dynamic and constructive interreligious human rights diapraxis that is generated at a particular African local level.

The research question that will be answered in this chapter is: In what ways can human rights be a relevant third party for Christian–Muslim relations in a African local context? To find an answer, I have defined human rights in terms of culture. In this study I have shown that the specific relationship between religion and human rights is a matter of local context, which necessitates a situational empirical study. In order to identify a possible rapprochement between religion and human rights, I have, therefore, focused on the specific locality of the Eastleigh Estate in Nairobi, Kenya. In this particular context, I have explored the possible shades and features of an interreligious, human dignity-based culture. In order to identify the human rights culture in Eastleigh as relevant, I will identify, in this concluding chapter, six possible features of such a culture.

With the help of Amartya Sen's social choice theory as the theoretical framework of this study, I will discuss the question to what extent the concept of human rights culture can be used in an interreligious praxis.

In order to link these features of human rights culture to human rights in terms of international law, I will focus on the concept of human dignity as interpreted by Jürgen Habermas. This exercise will reveal the notion of human dignity to be the linking pin between international law and concrete human rights violations on the ground. Using the theoretical framework of social choice, complemented by Habermas's theory on human dignity, I will then describe how Muslims and Christians, as East-leigh's civil society agents, actually participate in a shared human rights culture. I have defined the methodology these agents use in doing so in terms of *diapraxis*, as a reflection on Christian-Muslim interaction that surpasses discursive Scripture-based dialogue. First, however, I will return to the parameters of the current research by summarising Sen's threefold criticism of human rights and place it within a cultural and interreligious perspective.

Sen's critique of human rights

Sen developed his ideas of social justice in reaction to Rawls's rational theory. According to Sen, a master plan charting all needs of all people in every context is not necessary if one exercises social rather than rational choice (cf. Johannes A. van der Ven in Van der Ven & Ziebertz 2012: 97). Social choice theory offers comparative, partial or 'relaxed' resolutions to issues of justice, and has a dialogical merit through its principle of open impartiality. Social choice theory offers, therefore, a proper framework for discussing interreligious dialogue on human rights.

As described in Chapters 1, 2 and 3, right from the moment of its promulgation, the concept of universal human rights has been and continues to be part of an ongoing critical discourse. In line with Sen, I have discussed a threefold critique of human rights: (1) the legitimacy critique (foundationalism), (2) the coherence critique (rights and duties), and (3) the cultural critique (cultural relativism). I have applied these critiques within an interreligious perspective.

In terms of (1) legitimacy, there is sufficient overlap between at least three Christian and Muslim concepts regarding the religious underpinnings of human dignity and rights. First, the concept of 'natural law' as a Christian source of human rights values is comparable to the Islamic theological tenet of *fitra* (innate disposition). Second, the terminology of 'public (political) theology' is a comparable Christian and Muslim connotation which could continue to serve as a basis for a discursive dialogue

on a common human rights praxis. And third, the Christian *imago Dei* metaphor has significant overlap with the Islamic concept of *khalīfah*. In Chapter 3, I focused in particular on these concepts of *imago Dei* and *khalīfah*. Both concepts share the same connotation of stewardship and vicegerency as a dignifying divine action. From a Muslim perspective this action implies that the human being is Allah's deputy (*khalīfah*) on earth, his position in creation. From a Christian perspective, '[a]s made in God's likeness, human beings possess a sacredness analogous to the holiness of God' (Hollenbach 2014: 252).

With regard to Sen's 'coherence critique' (2) of human rights, the role of responsibilities, obligations or duties in the discourse on human rights can actually provide an initial concrete way forward for encounters between scholars of religion. In a predominantly Western culture of claimed rights, human rights defined as responsibilities – or as 'imperfect obligations' in Sen's terminology – can be useful to commence a more effective intercultural dialogue. This research has shown that from an African moral-spiritual perspective, human rights and responsibilities go hand in hand. In terms of ensuring basic human rights such as the right to subsistence and security, for instance, both the Islamic and Christian language of responsibility have something to offer. Every person who is in a position to help has the imperfect obligation to do so. Rich people have the obligation to uphold the rights of the poor. Religions in this way mitigate human rights talk by counterbalancing rights with corresponding duties and responsibilities. According to Oh (2007) and Ter Haar (2011), intercultural dialogue on human rights can, therefore, begin most effectively with the topic of the interdependent relationship between rights and responsibilities.

In terms of Sen's cultural critique (3) of human rights, the issue of cultural relativism, there is enough room in both Christian and Muslim academic thought on human rights standards for public discourse about a proper balance between universal rights and culture-specific values. According to Sen, human rights derive their universal status from the fact that they are part of a 'universalizing move' from distinct cultural perspectives. In such a movement towards the universality of human rights, Asian and Islamic values have their own contribution to make in addition to Western human rights values. In this ongoing project, these values therefore have dialogical merit. 'This involves the invoking of an interactive process of critical scrutiny with open impartiality (including

being open to information coming *inter alia* from societies and arguments coming from far as well as near), which allows disputations on the content and reach of putative human rights' (Sen 2009: 385). Hence the importance of the connection between human rights (as a process) and public reasoning in a global, regional *and* local intercultural dialogue on rights. It is therefore crucially important to incorporate Asian and African voices on what human rights mean in local contexts.

With reference to Kenya, Makau Mutua maintains that the colonial subtexts, in terms of his 'savage–victims–saviour' (SVS) metaphor, is still very much alive in the contemporary human rights movement. He has therefore advocated the genuine cross-contamination of cultures to create 'a new multicultural human rights corpus' (Mutua 2002: 8). '[T]he imposition of the current dogma of human rights on non-European societies flies in the face of conceptions of human dignity, and rejects the contributions of other cultures in efforts to create a universal corpus of human rights' (Ibid.). In his view, 'human rights are perceived as an attack on non-European cultures that it deems barbaric and seeks to transform'. Yet, Mutua observes a change in 'the given credence to human rights as a historical continuum of the civilizing mission of Eurocentrism'.

'To be sure, 2015 is not 1948. A lot has changed in the world of human rights. The normative character of the human rights corpus is slowly being transformed into a more inclusive dogma. But this transformation is not deep enough. For example, as a secular enlightenment project, the human rights movement still does not know how to relate to Islamic societies, that is, how to understand and work with their views about the relationship between state and religion or their understanding of gender (...) Can this change come from the top, that is, the West, where the traditional human rights movement has its most ardent supporters and defenders? Or will it be initiated from below, the South, where the grassroots, on-the-ground work is being done?' (Mutua 2016: 179-80)

In Mutua's view, there is still room to redeem the human rights concept from its Eurocentric, secular Enlightenment principles 'from the top'. Mutua is critical if positive about change and transformation 'from below', from the South, which in his view could still make the human rights idea inclusive through 'on-the-ground work'. Abamfo Atiemo's 'inculturation model' as applied in the context of Ghana (discussed in Chapter 1) can be helpful in this regard. He speaks of human rights as

social properties of local cultural systems. The inculturation of human rights has occasioned local translations of human rights that have facilitated a modest spread of human rights culture (Atiemo 2013: 195, 198-9). Atiemo has defined human rights as ‘dream values’ that always have a *couleur locale*, necessitating the awareness of their localisation or *sitz im leben*. Also from a Ghanaian perspective, Kwame Gyekye has concluded that, ‘[I]t may be said, in general, that human rights are fundamental to the African cultural (including moral) values’ (Gyekye 2002: 152). Focusing on an African regional perspective, I will make my analysis of what a locally embedded, ‘inculturated’ model of human rights culture ‘from below’ and through ‘on-the-ground work’ looks like. According to Ibhawoh, ‘Securing local legitimacy is therefore crucial to prospects of human rights promotion and protection in Africa. Human rights norms are likely to be more effective and relevant when they are intelligible in local idiom and vernacular’ (Ibhawoh 2018: 234). To this effect, I will distinguish six characteristics of such a culture.

SIX FEATURES OF HUMAN RIGHTS CULTURE

In this study, the understanding of human rights has been broadened to encompass ‘the culture of the human rights contained in declarations of human rights, hence the totality of beliefs, principles and values underlying these, and respect for that culture’ (Van der Ven et al. 2004: 82ff). Human rights culture of this kind, in my analysis, allows for at least six fresh perspectives on human rights.

Human rights culture, (1) goes beyond strictly legal approaches to human rights and focuses on morality; (2) complements international human rights legal standards ‘from above’ by local human rights perspectives ‘from below’; (3) has ‘mobilising power’ in a struggle for human rights that requires motivation beyond national boundaries; (4) introduces beliefs, principles and values that often have a spiritual content; (5) has ‘dialogic merit’, inviting public discourse on human rights values; and, finally, (6) is rooted in a human rights practice on the ground.

These six characteristics of human rights culture need to be elaborated further. I will use Sen’s social choice theory to explain each feature and will introduce Habermas’s theory on human dignity in order to corroborate each of the six features of human rights culture that I have

identified. I will then in each section look for these features of human rights culture in the specific context of Eastleigh.

1. Human rights international law and moral values

By broadening human rights to include the concept of human rights culture, the risk of ‘juridification’ (Ter Haar 2011: 305) of human rights is avoided and human rights are freed from the ‘iron cage of legal instrumentalism’ (Riles 2006: 52). Or, in the words of Johannes Morsink, ‘We must follow the lead of the Declaration’s drafters and liberate the idea of human rights from the realm of the political and juridical, which is where contemporary theorists have imprisoned it’ (Morsink 2009: 53). Human rights culture *does* respect the Universal Declaration of Human Rights and all its subsequent international covenants, treaties and documents. However, in Van der Ven’s definition of human rights culture, the scope of human rights in the sense of a strictly legal instrument is widened by relating it to its underlying beliefs, principles and values. Thus, the concept of human rights as they are commonly understood in terms of international law proper is broadened by adding socio-ethical, even moral and spiritual connotations. As a consequence, human rights culture engages both human rights academics and practitioners, instead of just lawyers and international legal experts. According to Sen, human rights are ‘articulations of a commitment in social ethics’ (Sen 2011: 12). In his view, ‘[I]t is important to give the general ethical status of human rights its due, rather than locking up the concept of human rights prematurely within the narrow box of legislation’ (Sen 2009: 366). Philosophers, anthropologists, social scientists as well as scholars of religion are all invited to join the discourse on what human rights culture might entail in concept and in practice.

Jeffrey Flynn has discussed the different ‘compatibility debates’ in which he has confronted Christianity, Islam and Asian values with the concept of human rights. He has then looked at the ‘compatibility debates’ from the concept of three philosophical frameworks, devised by John Rawls, Charles Taylor and Jürgen Habermas, respectively. He has focused his research on the concept of human dignity in Habermas’s thinking and in the context of intercultural human rights dialogue (cf. Habermas 2011: 80-100). Flynn has concluded that with some modifications, Habermas’s model is best suited to an intercultural dialogue on

human rights. I will borrow his model and apply it to the practice of Eastleigh.

Habermas's emphasis on human rights as morality is a later development in his thinking. Habermas has described human rights as 'Janus-faced': one side facing morality, the other facing the law (Habermas 2010: 470). By connecting the concept of human rights with human dignity, Habermas has kept sight of the moral side of human rights law. Historically, he has argued, violations of human dignity in the real world have always been a motivating source for drives to devise a constitutional legal project (Ibid.). The notion of human dignity therefore serves as a 'conceptual hinge' that makes the 'improbable synthesis' between morality and positive law possible (Ibid. 469). In Habermas's words,

[I] present some legal reasons in support of the claim that 'human dignity' is not merely a classificatory expression, an empty placeholder, as it were, that lumps a multiplicity of different phenomena together but the moral 'source' from which all the basic rights derive their meaning (...) The origin of human rights in the moral notion of human dignity explains the explosive political force of a concrete utopia. (Ibid. 466)

Whereas Habermas upholds a legal framework in terms of intercultural dialogue, Flynn maintains that the more pressing question is not whether human rights, as norms and morality, *can* be translated into law, but whether they really *must* be. According to Flynn, human rights do not necessarily start as law per se; they begin as concrete local, social and political struggles. Human rights theorists have to focus on specific struggles for human dignity – as in the case of Eastleigh, I would argue – before they talk about possible legal implications. The moral substance of human dignity, therefore, is at the heart of any human right. In line with Sen, sympathy for and commitment to the other can be the basis for human rights to be understood as the imperfect obligations that every person has who is in a position to help. I have identified this shift from human rights in the strictly legal sense to an understanding that includes moral norms as the first of six characteristics of human rights culture.

In the case study of Eastleigh, I discovered that there is a gap between the ratification of formal international and national legal treaties on the one hand, and incidents of human rights violations on the ground on the other. To the people of Eastleigh, official legal structures and institutions appear untrustworthy, time-consuming in their proceedings,

and too expensive. The agents cannot afford to wait for the legal specialists to solve human rights violations. 'We just help', replied Nawaz Siddiqui, a board member of the Islamia School and Mosque Association, when I asked him about the association's policy regarding refugees which aims at avoiding political-legal controversies. The plight of residents in Eastleigh makes practitioners of civil society eager to look for moral alternatives to the formal justice system, which consumes time and money. Through their legal aid services, NGOs such as Kituo cha Sheria try to bridge the gap that exists between citizens and legislators. FBOs like Islamia School and Mosque Association – through the Sufi *dhikr* rituals which have been described earlier, and for instance through food distribution – provide their members and outsiders with a basic dignity that cannot be provided by the Republic of Kenya's human rights-based Constitution. A moral human dignity-based approach to human rights issues is in evidence here. In the context of Eastleigh, social monitoring and other activist support provided by organisations such as Human Rights Watch, Amnesty International, Doctors without Borders, and other NGOs 'can help to advance the effective reach of acknowledged human rights' (Sen 2009: 365). When official constitutional structures seem to be void, the human rights (I)NGOs appear to operate from below. An example is the HRW's so-called 'naming and shaming' approach in its publication entitled 'You are all terrorists', issued just after the April 2013 swoop in Eastleigh. As explained earlier, Amnesty International has questioned the HRW's critical approach to the Kenyan government.

In Sen's framework, human rights activism in terms of practical actions – through recognition, monitoring and agitation – can therefore play a constructive role in theorising about human rights in the moral sense. Thus, Kituo cha Sheria has succeeded in enhancing the human rights of Eastleigh's refugees by monitoring and agitating on their behalf. Grace Omweri of Kituo described the inefficiency of Kenyan criminal law as the core problem of the legal situation of refugees. The result of this odd situation is an omnipresent network of trained voluntary paralegals that circumvents the expensive and time-consuming legal route. Eastleigh's civil society, including its NGOs, CBOs and FBOs, is working together to promote human rights values without trying to address, let alone change, legal structures. In Eastleigh, these civil society agents are dealing with issues of morality through their advocacy work. Mama

Fatuma Goodwill Children's Home and organisations such as the Jesuit Refugee Service (JRS) and the Mennonite Central Committee, have fielded social workers and practitioners who are working in Eastleigh. They all have human rights-based advocacy as their explicit vision and mission, emphasising human rights more in terms of morality than in terms of international legal standards. JRS counsellor Mbisu, for instance, described the situation of his clients as 'hopeless, helpless, and leading to depression and even despair', without referring to constitutional or international law: 'We are helping in the best way possible by accompanying, serving and advocating for the rights of refugees'.

Because of the asymmetry of power between the Kenyan government and Eastleigh's residents, human rights activists are fulfilling the unilateral obligation or responsibility to vindicate the rights of Eastleigh's residents. Especially the paralegals' action-oriented commitment, which is derived from moral-spiritual sources, is aimed at increasing access to rights for everyone (cf. VPRO documentary 2016-17). In this instance, human rights are regarded as moral claims rather than as constitutional or international legal standards. Sen's description of human rights as imperfect obligations are actually working on the ground in Eastleigh. The Mosque and School Association, for instance, does not refer to refugees as a special group. 'We don't ask about the status of those we assist, we just help', Siddiqui explained referring to the situation of refugees as a political issue.

2. Human rights 'from below'

The definition of human rights culture introduces more localised perspectives on human rights 'from below', as opposed to verdicts of international human rights courts and other related institutions 'from above'. As Michael Ignatieff has vigorously stated, '[h]uman rights has gone global by going local, empowering the powerless, giving voice to the voiceless' (Ignatieff 2001: 70). Human rights declarations from above and human rights activism from below should therefore go hand in hand. 'Downstream' and 'upstream' (De Gaay Fortman 2004: 69) connotations of what human rights stand for can thus effectively meet in contexts such as that of Eastleigh. A focus on human rights culture can help us to map concrete violations of human rights as has been done by the NGO RefugePoint. It brings human rights to the place where infringements of human dignity, as well as remedies, are felt most keenly: on the

ground. Human rights culture, therefore, can be translated into concrete terms at the everyday micro-level, such as in the day-to-day lives of Eastleigh's residents. Whereas international human rights treaties can offer the necessary overall legal framework, human rights culture actually becomes relevant in concrete cases of violations. According to Sen, human rights do not 'exist' as legislation on statute books, but they appeal to proclamations of the creative idea that every person in any community *should* have rights (Sen 2009: 355). Local cultural perspectives on human rights, and actual struggles for human dignity put flesh on the bones of international legal standards. Thus, human rights activism arises from violations of human dignity on the ground *before* human rights become law.

Local contexts matter for human rights culture. Habermas has stressed the 'catalytic role' (Habermas 2010: 466) of human dignity in constructing the modern idea of what human rights actually mean in distinct contexts. According to him, specific violations of human dignity – such as those experienced by marginalised social classes, discriminated minorities, illegal immigrants, and asylum seekers – make the meaning of human dignity apparent and therefore manifest the need for specific human rights. He has argued that '[i]n the light of such specific challenges, different aspects of the meaning of human dignity emerge from the plethora of experiences of what it means to be humiliated and be deeply hurt' (Ibid. 467, 468). The groups mentioned by Habermas are all represented in the society of Eastleigh. In Habermas's view, the concept of human dignity encompasses a genuinely constructive bottom-up process. Human dignity is not an ultimate value from which the content of human rights is derived, but is a key concept for understanding the dynamic process of social struggles through which the moral content of human rights is generated and continues to expand (Ibid.). Habermas thus uses the concept of human dignity in a way that connects it with specific struggles for human rights. What human rights norms share with other moral norms is their rather abstract character and thus the fact that they need to be interpreted in specific cases and local contexts.

Eastleigh has its own struggle for human dignity at grassroots level, from which the content of human rights culture is derived. The Eastleigh Fellowship Centre (EFC), for instance, operates locally within the Mennonite Central Committee's 'holistic approach to basic rights'. MCC works in a human rights framework but focuses on 'the grassroots de-

velopment of greater social justice, human dignity, and local ownership'. David Amara, the director of EFC, contrasts the MCC's global mission with EFC's local approach. Whereas MCC as a global organisation is disaster-oriented and directed to humanity as a whole, EFC works specifically to facilitate the local community through its educational and recreational programmes. As a Christian FBO, EFC works from the bottom up to enhance a human rights culture through inter-communal relations in a volatile context. In this case a human rights culture from below has the potential here to give people a sense of agency that enhances the realisation of their human dignity.

3. Human rights as a mobilising force

Human rights culture has a motivational connection to law but is not itself legislation as such. As a culture, it is more open to creative interventions by local civil society than are mere implementations of often static national and international legal standards. According to Sen, generally speaking there is a need to acknowledge the motivational impetus of the idea of human rights, but there is not necessarily a need for legislation or institutional enforcement of fundamental human rights. In terms of the Bentham–Hart controversy (discussed in Chapter 2 of this work), Sen appears to agree with Hart in the sense that rights can be 'the parents of law': rights can motivate and inspire legislation, whereas for Bentham rights without legal foundations were 'non-sense on stilts'. Individual human rights activists are intrinsically motivated to push for 'imperfect obligations' that are not yet legally binding.

Human rights as moral claims exceed regional and national legal boundaries and indeed have 'mobilizing power' (Habermas 1993: 651). Even stateless refugees have 'a right to have rights' (Arendt 1968: 335). Regardless of one's citizenship, religion or class, people are entitled with inalienable rights, based on the impartial rights of a shared humanity. 'The title of the French *Déclaration des droits de l'homme [!] et du citoyen* of 1789 stresses this point' (Van der Ven & Ziebertz 2012: 102). In a human rights cultural framework *human* rights and dignity precede one's rights as a citizen of a particular state. According to Habermas, '[i]ncreasing the protection of human rights within nation-states or pushing the global spread of human rights beyond national boundaries has never been possible without social movements and political struggles, without courageous resistance to oppression and degradation' (Haber-

mas 2010: 476). In line with Habermas, Flynn (2014: 108) concludes that '[H]uman dignity thus becomes part of a conceptual framework for understanding and explaining the moral dynamic of human rights in practice'. This moral, dynamic, mobilising force of human rights culture is inspiring both Muslim and Christian paralegals in the praxis of Eastleigh to enhance human dignity which transcends nation-state, constitutional boundaries. The common indignation about human rights violations locally is, therefore, the mobilising power of human rights culture, before considering human rights in terms of universal, international law.

In Eastleigh, the paralegals and workers of (I)NGOs or local CBOs, individuals with a predominantly religious inspiration, monitor the rights of less fortunate residents in obtaining a legal status, not to further their own private interest, but because of their desire to help where there is no other help to be found. The agency of these members of civil society is based on sympathy, or what Sen prefers to call 'commitment' (Sen 1999: 270). They are motivated to fulfil their 'imperfect obligation' to others on a moral basis. This 'commitment-based action' thus fills a niche that the official authorities are failing to regard as their legal obligation. The paralegals I met in Eastleigh were almost all intrinsically motivated to work on a voluntary basis. Sometimes they faced personal security risks on account of their involvement in the legal status of refugees. Despite the circumstances in which they operate, their resilience and ongoing motivation and even eagerness to intensify their work is remarkable. The intrinsic motivation of these civil society agents mobilises their human rights activism on the ground and link violations of dignity with international human rights standards.

4. Moral-spiritual human rights

Human rights culture takes into account beliefs, principles and values, whereas human rights as international law claim to be neutral in moral-spiritual terms. I have shown in this study that religious and spiritual values and beliefs can accord very well with human rights culture. Gerrie ter Haar has differentiated in this regard between *moral-legal* structures and *moral-spiritual* approaches to human rights. While moral-legal structures are important for the overall protection of human rights, 'in countries marked by a religious outlook on the world these must be matched by a *moral-spiritual* approach to the subject. The latter might lead to greater attention for a proper balance of rights and responsibilities in the human

rights debate, which is often a matter of concern to religious people' (Ter Haar 2011b: 305).

In Habermas's view, human dignity is not an ultimate value from which the content of human rights is *derived*. Human dignity for him is not a foundational concept. This is an important point to stress here, since in Habermas's theory human dignity is not derived from a single authoritative source but is a historical claim and a claim about the moral grammar of political struggles for human rights (Habermas 2010: 466). Habermas appears to be distancing himself here from traditional, probably also religious foundationalism as discussed above. Although Habermas seems to be inviting religious interpretations to a dialogue on what human dignity might entail, he has dismissed such an approach as a traditional derivational project. Traditional foundationalism, in his view, is not helpful in current political struggles to enhance the human condition (Ibid. 469-70). But is this really true? Does searching for a moral-spiritual source for human rights activism really mean setting back the clock? Can religious interpretations of human dignity only be understood in foundational terms, as lacking 'political grammar' as Habermas has suggested? I do not think so. Van Der Ven's interpretation of *imago Dei* in terms of 'connective justice' and Esack's understanding of *wilāyah* in terms of 'liberative praxis', for instance, show how traditional or religious views of dignity can indeed also be part of the political struggle for human rights as the action-oriented 'moral grammar' of human rights.

Referring to the Kenyan situation, the scholar of religion, Philomena Njeri Mwaura, also has also underscored the importance of spirituality in championing human rights in context:

Spirituality is a significant driver of change, for it underscores and informs the development interventions and initiatives of faith-based organizations in (...) human rights and social justice. Religion has been playing a pivotal role in social transformation of African societies. Inter-religious and ecumenical initiatives have for example transformed situations of conflict into contexts of dialogue and understanding. (Mwaura 2008: 2)

A good example of the constructive role that religious members of society can play in times of tension are the *Ufungamano* talks in the Ufungamano House in Nairobi, in which representatives of more than 50 different human rights organisations and religious groups participated. It involved FBOs in the human rights-based democratisation process in

Kenya in the late 1990s. Through the Ufungamano Initiative, political activism set the stage for the participation of religious actors. The initiative illustrated ‘the potential of religious leaders to create a movement for social change’ (Marshall 2017: 48-9).

Chapter 4 has shown how religious characteristics run through the economic, socio-cultural, and political veins of Eastleigh. I found that almost all paralegals and members of civil society had some explicit or implicit spiritual motivation for their advocacy work. As Chapters 5 and 6 have outlined, human rights as conceived in terms of religious values and morality play a pivotal role on the ground. Whereas the agents of most NGOs and CBOs appeared to relate to their religious affiliation implicitly, the position of the FBOs appeared to be mixed, with St Teresa’s and the Islamia School and Mosque Association operating from ‘faith-centred’ and ‘faith-permeated’ perspectives, respectively, and the Eastleigh Fellowship Centre and Mama Fatuma Goodwill Children’s Home doing so from ‘faith-affiliated’ and ‘faith-background’ perspectives, respectively. In the context of Eastleigh, religions – especially Christianity and Islam – are key when interpreting agency on issues relating to human rights and human worth. The spiritually-driven agency of human rights activists in places such as Eastleigh therefore must be taken into account when we talk about human rights culture.

5. The dialogical merit of human rights

The definition of human rights culture presupposes a public discourse on a shared concern for human dignity. Human rights as social ethics have a ‘dialogic merit’ (Sen 2009: 110), necessitating intercultural and interreligious dialogue on human rights and human dignity. Human rights ideas need public discourse or dialogue in order to become shared principles. In Sen’s social choice theory, public reasoning and unobstructed discussion of what these principles actually entail is crucial. Dialogue about the need for people to respect each other’s rights and dignity is an ongoing, open-ended, and necessarily interactive process.

As Chapters 2 and 3 have shown, ever since the idea of human rights came to the fore, the acceptability of the idea has been scrutinised at a global level, and particularly at the regional level in Africa and Asia. Often the ongoing discussion on what human rights actually entail is regarded as a sign of weakness. According to Sen, this lack of agreement on what human rights actually mean is no embarrassment at all: ‘A claim

of human right is only a claim, and unlike a legal right that is backed by a law that everyone within the system is meant to accept, there is no corresponding claim to monism in the human rights approach that I am trying to present' (Sen 2011: 14). Sen's disavowal of monism I interpret to mean that human rights do not have only one foundation, but can have several. In the words of Van der Ven, the UDHR as a basic text on human rights is a pragmatic text, which is not foundational but deliberately leaves the establishment of such a foundation open. 'The 1948 declaration contains no reference to God whatsoever, nor to natural law or natural rights, nor to any worldview or even philosophy. It is a "foundation-open" text (a *begründungsoffen* text)' (Van der Ven 2010: 161). The discourse on the foundation human rights should not be seen as an invitation to lecture from a Western Enlightenment perspective, but rather as an invitation to a public discourse on what its various sources could be. Van der Ven and Flynn have set the parameters of such a interfoundational dialogue (Ibid. 182-5 and Flynn 2014: 143-4). On the local level of Eastleigh, human rights as ethical values concerning justice and injustice are part of a participatory process through public reasoning. Citizens from Eastleigh who are almost all Muslims and Christians are invited to embark on this process too.

The dialogical merit of human rights is thus an invitation to public discourse on human rights values. Habermas has contended that intercultural dialogue on human rights and human dignity will lead to a 'de-centred' understanding of a normative construct that is no longer the property of Europeans any more (Habermas 2011: 69-70 & 78-9; cf. Flynn 2014: 124). Intercultural dialogue provides a concrete opportunity to establish common ground in the context of pluralism (Habermas 2011: 78; cf. Flynn 2014: 125). 'The distinction between norms that are universalizable and broader conceptions of the good life can be defended quite pragmatically, with reference to the requirements for a successful dialogue on norms that are to govern those who adhere to very different cultures and world views' (Flynn 2014: 128). Habermas has argued that secular and religious citizens must remain open to the idea of a 'cooperative translation project' among secular and religious participants in their dialogical approach to human rights (Ibid. 153). Therefore, religion as 'contemporary intellectual formation' should be an equal partner in dialogue (Ibid. 158). Post-metaphysical philosophers should maintain a dialogical openness to 'untapped moral institutions' within religion, espe-

cially on the religious origins of conceptions of human dignity (Ibid. 159). Habermas's discourse theory can therefore help to frame such a dialogue in a more constructive way. Within such a framework, voices from far and near can be invited to a rights-based 'cooperative translation project'.

Can such a cooperative translation project of human dignity be found in Eastleigh? At first glance, the most obvious locus for such sustainable interreligious encounters are the open-air gatherings or *mihadhara* at the street level. In recent history, these Muslim open-air gatherings have often been used to counter Christian outreach methods. The *mihadhara* offer self-esteem to Eastleigh's Muslim residents, who often feel marginalised and discriminated in Kenya's Christian majority context. However, as shown in Chapter 4, the *mihadhara* have become part of interreligious as well as intrareligious contention. Both Islamist-revivalist and Sufi-mystical expressions of Islam are competing for the souls of Eastleigh's residents. This internal controversy also has its repercussions for Muslim-Christian relations. Instead of places of possible interreligious encounters on common issues related to justice and human dignity, open-air preaching sessions have become 'battles of the books' that leave little room for mutual understanding. *Mihadhara* appear to be 'controversial especially for those with an inclination to engage in a discussion of comparative religion' (Mwakimako 2007a: 22).

However, if placed within a framework of a human rights culture that contributes to both freedom of religion and freedom of expression, the *mihadhara* could become fruitful encounters that enhance sustainable interreligious interaction by identifying and addressing local social and political issues and problems in the light of human rights and human dignity. According to a survey by Mwakimako, *mihadhara* are popular among local spectators. According to him, Muslims in Kenya feel that imams do not adequately address human rights issues (Ibid. 42). However, the Muslims of Eastleigh do refer to human rights standards, especially in the wake of 'the global war on terror' as it features, for instance, in Muslim media such as the two-weekly *Friday Bulletin*. As Chapter 4 has described, the themes debated at the *mihadhara* are manifold, and include societal, religious and political issues. If religious freedom-related issues, gender issues like SGBV, and access to justice could also be discussed during these debates, all participants are likely to benefit from these popular encounters. Based on the religious concepts of *imago Dei* and

wilayah, for instance, *mihadhara* then become venues for the enhancement a local, human dignity-based human rights culture. By discussing concrete human rights struggles, Muslim and Christian paralegals and other civil society members can find common ground during the *mihadhara* in order to embark on a diapraxis for the common good.

According to Santos,

In spite of the setbacks and shortcomings (discretionary selectivity, temptation to claim a single revealed truth, lack of practical consequences), the ecumenical and interreligious dialogues bear witness to a potential for interculturality within the domain of religion. If more coherently and actively pursued, such dialogues may be a powerful memory and a tested training ground for broader dialogues involving religious and nonreligious conceptions of human dignity. (Santos 2015: 74)

In the light of this quote, *mihadhara* can provide ‘a tested training ground’ for the human dignity-based interreligious interaction in Eastleigh.

6. Human rights as praxis

The ‘tripolar typology’ of exclusivism, inclusivism and pluralism, as proposed by Alan Race in 1983, needs further development. Pluralism invites discursive dialogue, which is the argumentative and reasoning interlocution about religious issues. However, according to Lissi Rasmussen, ‘interfaith relations were too focused on dialogue as a conversation about faith and too little on the interaction between human beings, involving larger relationships of living together, experiencing and working together. The challenge of working together toward a more authentic and just international social order have become more difficult and more urgent’ (Rasmussen 2007: 192). Lissi Rasmussen introduced the concept *diapraxis* to indicate this paradigm shift from discursive dialogue to interreligious cooperation or diapraxis.

Dialogical engagement in Eastleigh is less discursive and more oriented towards a hands-on approach. In Sen’s terms of practical action, human rights activism (through recognition, monitoring and agitation) should be part of (legal) theorising about human rights. In the light of his social choice theory, the acknowledgment of human rights entails an *ethical practice*. In terms of imperfect obligations, the ethical practice of human rights activism is part and parcel of the theoretical framework of

human rights. In his article on the elements of a theory of human rights, Sen has concluded that,

[I]t is also important to note that the conceptual understanding of human rights (...) can benefit substantially from considering the reasoning that moves the activists and the range and effectiveness of practical actions they undertake, including recognition, monitoring and agitation, in addition to legislation (...) [T]he richness of practice, I have argued, is also critically relevant for understanding the concept and reach of human rights. There is, I must conclude, no great deficit in the balance of trade between theory and practice. (Sen 2004: 356)

Sen has acknowledged the fact that human rights activists are often impatient with academic scepticism regarding human rights. Those who invoke human rights want to change the world rather than interpret it, given the urgency of confronting human rights abuses. 'Their proactive stance has had its reward (...) without having to wait for the theoretical air to clear' (Sen 2009: 356). The positive evaluation of human rights activism does not, however, mean that a theoretical framework must be omitted altogether. In terms of *diapaxis*, academic reflection and practical action go hand in hand. Makau Mutua has defined 'praxis' as 'the nexus and intercourse between thought and action (...) Ideas must be practised to be tested so that practice can inform ideas. That is why no barriers should exist between thinkers and activists' (Mutua 2016: 87). He has also given credit to those who stress human rights in practice but has voiced criticism of the role of 'true believers' who are 'too invested' in human rights praxis. 'While praxis is a reality, it does not overrule a subtle division of labour. Universities and think tanks in both the North and the South, but especially in the South, can make a critical contribution to the reformulation' (Mutua 2016: 180-1), namely of human rights standards.

In Eastleigh, there appears to be human rights culture on the ground that is action-oriented. The political, economic and social circumstances require reflection on the civil society agents' hands-on approach. The difficult situation that many residents find themselves in does not allow enough time and space for academic reflection on what legal rights they may or may not have in legal theory. It is therefore necessary for academics and especially for scholars of religion to reflect on a dialogical praxis, or *diapaxis*. As I have noted, Habermas has provided the notion of human dignity as the linking pin between human rights as law and

concrete human rights struggles on the ground. In his thinking, violations of human dignity have become the moral source from which all basic rights derive their meaning in practice. According to Habermas, '[r]eligion is not reflected primarily in a worldview but is embodied in the practice in which the community of believers *bears witness to* [italics in original] their faith' (Flynn 2014: 163). It is with respect to such a lived religion-in-praxis, as I would call it, that human rights as a culture can bridge the divides between Christians and Muslims in Eastleigh. According to Habermas, '[s]hared moral indignation extends across the gulf separating different cultures, forms of life, and religions as a response to egregious human rights violations and manifest acts of aggression' (Habermas quoted in Flynn 2014: 186). Thus, the driving force behind the civil society members' practical commitment is this 'shared moral indignation'. In Eastleigh, Muslims and Christian paralegals, as part of civil society, bear witness to their faith by implementing the acquired legal skills at the level of praxis.

In sum, I regard the six features of human rights culture I have identified as complementary to national and international legal standards of human rights. Sen's social choice theory has proved to be helpful in framing Eastleigh's civil society in terms of human rights culture. Whereas human rights as constitutional law is absent in the daily practice of Eastleigh, human rights culture as expressed in these six aspects is widely present. Human rights culture, consisting of moral, bottom-up, mobilising, spiritual, dialogical and practical aspects, appears to be highly relevant in this particular African local setting. The concept of human dignity, especially of those in need, can thus be the common agenda of both Christians and Muslims. 'Connective justice' (Van der Ven et al. 2004: 301) and 'liberative praxis' (Esack 1998: 203) provide the rationale for this kind of agenda on Christian-Muslim praxis. Diapraxis, as a methodology of joint social action of Muslims and Christians, can be relevant in the common search for justice. A faith-based concept of human dignity can indeed be part of the 'moral grammar' of human rights, as Habermas (2010: 466) has formulated it. In line with Esack's critique of interreligious dialogue as 'the middle-class discussion on the finer matters of faith, in isolation from liberative praxis', joint human dignity-based interaction can become a remedy for the discursive 'dialogue fatigue' (Kubai & Adebo 2008: 14) described in Chapter 1.

FAITH IN EASTLEIGH'S CIVIL SOCIETY

In this study, I have shown that Eastleigh has a thriving human rights culture. I regard the activism of Eastleigh's civil society members, who are primarily faith adherents, as an experiment of joint action-oriented 'connective justice' and 'liberative praxis'. The members of the various NGOs and CBOs either explicitly or implicitly include the idea of human rights in their work. Muslim and Christian paralegals attend courses on human rights and apply the acquired knowledge in their activities. The agencies that work on behalf of the refugees of Eastleigh are organised through extended networks of paralegals at the grassroots level. At the level of FBOs, the agents appear to take human rights values for granted. The distinct Muslim and Christian identities of these agents do not impede interreligious collaboration at individual and group levels. On the contrary, their respective religious identities appear to buttress their individual role as paralegals in society and do not prevent them at all from collaborating with adherents of other religions.

In this study, I have focused on four FBOs in Eastleigh and I placed them in the framework of Sider and Unruh's FBO typology. Mama Fatuma Goodwill Children's Home I have described in terms of a 'faith-background' organisation. The former *madrasah* is now an organisation with a board consisting of both Muslim and Christian members. A number of human rights NGOs operate from within the organisation's premises. UNHCR human rights standards and children's rights are the most important determinants of its policy of acceptance of unaccompanied minors. The Eastleigh Fellowship Centre (Mennonite), which can be described as a 'faith-affiliated' organisation, is implementing MCC's explicit global human rights standards implicitly at a local level. The EFC focuses its activities on the wellbeing of the wider predominantly Muslim community and by doing so conveys the MCC's mission of dignity and social justice through nonverbal acts of compassion and care. The Islamia School and Mosque Association can be defined as a 'faith-permeated' organisation. Human rights are never discussed in this association, although, as has been explained, human rights culture does inspire the association's dignifying action: 'We just help'. St Teresa of Avila Parish Eastleigh accords well with the definition of a 'faith-centred' organisation. In the context of this parish, international FBOs are performing human dignity-based human rights in practice, as reflected, for instance

in the Jesuit Refugee Service's mission statement 'to accompany, to serve, to advocate'.

The Islamic FBO Mama Fatuma Goodwill Children's Home and the Catholic Justice and Peace Committee, as well as Jesuit Refugee Service affiliated with St Teresa's Parish Eastleigh, and the Mennonite Central Committee affiliated with EFC, all have a human dignity-based human rights culture as their model of how to relate to adherents of other faiths. Neither St Teresa of Avila's Eastleigh Parish nor the Islamia School and Mosque Association refer explicitly to human rights. However, in practice, all four organisations care for the dignity and human rights of refugees and other less well-off residents of Eastleigh, without regarding their distinct religious affiliations. The four FBOs, together with their affiliated organisations, have developed expertise in human rights monitoring and advocacy. Mama Fatuma Children's Home bases its policy explicitly on human rights, with a focus on Kenya's Children's Act. Orphans of distinct religious backgrounds are assisted as 'unaccompanied minors' within a UNHCR framework. Stickers with texts such as 'Children's rights are human rights' can be found everywhere in the home.

In sum, all four local FBOs contribute to an interreligious understanding of human rights culture through cooperative ventures to uphold human dignity. In contrast to NGOs such as Doctors without Borders, Amnesty International, and Human Rights Watch (which are relative newcomers), Eastleigh's FBOs have been present in Eastleigh for an extended period of time. In terms of 'faith-based action' they contribute to a sometimes rather latent, yet potentially vibrant, human rights culture. MCC, EFC's mother organisation, and CJPC and JRS, which work under the umbrella of St Teresa's, explicitly included human rights in their mission statements. Human rights seem to be *at work* in these instances. Human rights are most relevant wherever people suffer from abuse. In the local context of Eastleigh with its marginalised and discriminated minorities and illegal immigrants from different cultural and religious backgrounds, human rights culture is rooted in upholding human dignity before addressing matters of international law. In the mosque, for instance, I was especially struck by the way *dhikr* gatherings bestow dignity on faith adherents amid Eastleigh's cocktail of filth and dust. The example shows the religious sources for human rights under conditions where human rights are absent as positive law.

Actual human rights violations of Eastleigh's residents provide the moral sources from which many human rights activists, Muslims and Christians derive their motivation for their struggles. Thus, a human dignity-based human rights culture is relevant for both Muslim and Christian paralegals and FBOs. Moreover, a human dignity-based human rights culture is enhancing Christian–Muslim interactions in Eastleigh. As Mahamoud Mohamad Sheikh of the Mama Fatumo Children's Home described the former *madrassah*: 'We are a charity, not a Muslim organisation. All faiths can come together in charity'. In a human rights cultural perspective, charity is a human right of the poor and the imperfect obligation of the rich.

TOWARDS A HUMAN DIGNITY-BASED DIAPRAXIS

At the start of the drafting of the UDHR in 1945, the Catholic philosopher Jacques Maritain claimed that the composers, who were from very diverse backgrounds, 'agree about the rights but on the condition that no one asks why'. According to Maritain, the UNESCO committee, including important thinkers of the time such as Mahatma Gandhi, René Cassin, and Charles Malik, and religious representatives from Christian as well as Muslim backgrounds, could agree on practical convictions. According to Maritain, the goal was to agree 'not on the basis of common speculative ideas, but on common practical ideas, not on the affirmation of one and the same conception of the world, of man, and of knowledge, but upon the affirmation of a single body of beliefs for guidance in action' (Maritain in Witte 2013: 346).¹ Despite quite different metaphysical or religious outlooks, men and women can concur on the same practical solutions in relation to human rights. They 'can share in the same practical secular faith, provided that they similarly revere, perhaps for quite different reasons, truth and intelligence, human dignity, liberty, brotherly love, and the absolute value of moral good' (Valadier 2014: 265). In Maritain's own theological perspective, every human being is made in the Creator's image and thus participates in 'a truly sacred dignity' (Ibid. 262). Maritain's philosophical ideas can inspire us, more than 70 years after this agreement was negotiated, to continue to look for more practical approaches to joint human rights activism. Or, to put it in his own words, '[i]f there are some things so terrible in practice that virtually no one will publicly approve them, and some things so good in practice that virtually no one will oppose them, a common project can move forward

without agreement on the reasons for those positions' (Maritain in Kohen 2013: 67). Such a common project is not primarily based on a single body of beliefs, but is equally guided by action. Van der Ven evaluates Maritain's pragmatism as follows:

Here we have an explicit admission that the Universal Declaration is a document open to a multiplicity of foundations, including religious ones. Hence it is not characterised by Western-style secularism, as many critics in the West but more especially in non-Western societies have claimed, but by a pragmatic common denominator: to reach agreement so as to do what needed to be done. This pragmatism emerged and still emerges from imagined empathy for the experiences innocent, suffering people went through and still go through, the pain they feel, the angst they live in. (Van der Ven 2010: 166)

The pragmatic approach of the UNESCO commission seemed the only way forward, accepting that all members are agreeing to disagree on its foundations. According to Ignatieff, 'There is thus deliberate silence at the heart of human rights culture' (...) 'Pragmatic silence on ultimate questions has made it easier for a global human rights culture to emerge' (Ignatieff 2001: 78). The ground human beings share, according to him, is quite limited: 'not much more than the basic intuition that what is pain and humiliation for you is bound to be pain and humiliation for me' (Ibid. 95). In Sen's words, 'The reach and force of sympathy must be part of the conceptual underpinning of human rights' (Sen 2009: 372). In my view, this 'bare human minimum' (Ignatieff 2001: 95) of action-oriented commitment can create the basis for human rights activism without necessarily being silent on its spiritual sources.

The aim of the present research has been to effect a paradigm shift from discursive interreligious dialogue to human dignity-based diapraxis. By involving themselves in an 'Olympics of good works' (Hamilton 1991), Muslims and Christians can join hands in a common endeavour to map out this paradigm shift in the understanding of human rights. In order to do so, they search for local notions of human rights in the messy margins of places such as in Eastleigh. Interreligious diapraxis is based on the moral source of human rights, in this study, the human dignity of all residents of Eastleigh. By introducing human rights culture as a dignifying third party, and in affecting a paradigm shift in terms of imperfect obligations and morality, human rights can further Christian-Muslim relations.

Human rights culture constitutes an invitation – probably even an imperative – to cross-cultural and religious diapraxis. The intersecting roles of both religion and human rights are necessary to build a constructive human rights culture ‘from below’. Practical interaction, or dialogical praxis, includes the community’s political and social issues (‘from below’). This is a dialogue of commitment through practice, for instance in joint social action, or even in human rights activism. Lissi Rasmussen has traced the shift in dialogue from discursive to practical theorising back to the 1980s and 1990s. According to her, ‘[t]his refocusing was reinforced by the types of crises that necessitated an approach with more influence at the grassroots level’ (Rasmussen 2007: 180). The way forward for Christians and Muslims, therefore, is to reflect on practical human rights-related issues in a joint venture. Concerns about human rights violations are local, and diapraxis should, thus, start on the ground. In the context of this study, diapraxis is understood precisely as such shared understanding of human rights directed at action. ‘*Diapraxis* demands solidarity with men and women in various parts of the world in such a way that one is personally affected by the injustices and violations of human rights in distant places, such as unfair international trading policies, improper treatment of refugees, debilitating arms trade’ (Sicard & Wulforth 2003: 138). Such particular circumstances are rampant in the ‘distant place’ of the Eastleigh Estate in Kenya’s capital city. The process of universalising human rights ‘from below’ may actually start in places like Eastleigh. Or in the words of Mutua, as he attempts to set the human rights agenda for the future:

National NGOs have an obligation to cultivate, inspire, and support the rise of small-scale NGOs at the village and town levels to focus on particularized and highly localized concerns. This is one way in which human rights can become the people’s zeitgeist [*sic*]. The most humble forums are the crucibles in which a lasting human rights culture can be grown. The lessons gained from this interpenetration – of local, national, and universal – must inform the future of standard setting and the work of rectifying institutional weaknesses in implementation’. (Mutua 2016: 142-3)

Mutua has asked societies to participate in the building of structures and principles that ‘enhance the human dignity of all, big and small, male and female, believer and unbeliever, this race and that community. But those norms and structures must be grown at home and must utilize the cultural tools to the people at the grassroots’ (Mutua 2002: 5). In this

way, a constructivist and contextual approach has much to offer to the universalising project of human rights. In a globalising world there is hardly anyone who is not a neighbour. Every citizen of the world is connected to every other citizen in their struggle for human dignity. Humankind is connected 'glocally' (Robertson 1994) through compassion, or rather, action-oriented commitment to fellow human beings elsewhere. The concrete task of addressing abuses of human dignity in every corner of the globe belongs to both human rights scholars and practitioners. Interreligious dialogues on theological issues or dialogues among policymakers alone will not suffice. What is needed is to walk the human rights talk. In Esack's words:

Let us hope that, because of, and not despite, our different creeds and worldviews, we are going to walk this road side by side. Let us hope that we will be able to sort out some of the theological issues whilst we walk the road (...) While the struggle for gender equality is about justice and human rights for women, it cannot be regarded as a women's struggle any more than the battle against anti-Semitism is a Jewish struggle, or that of non-racialism a struggle to Blacks, or that religious pluralism one belonging to Western academics. All of us, whether in our offices, bedrooms, kitchens, mosques or boardrooms participate in the shaping of the cultural and religious images and assumptions that oppress or liberate the other, and thus ourselves. (Esack 1998: 261)

Human rights and religion are perhaps strange, but necessary bedfellows. With regard to the compatibility debate of religion and human rights, a distinction has to be made between rhetoric, based on analysis of religious connotations, and action: how people actually bear witness to and live out religious thought by 'vernacularizing' (Ibhawoh 2018) or localising human rights in a particular interreligious context such as Eastleigh.

CONCLUSION

Following Van der Ven et al., I have defined human rights in terms of human rights culture. Using Sen's social theoretical framework, I have shown that this definition allows for six fresh perspectives on human rights. I have linked human rights culture, with its (1) moral, (2) local and bottom-up, (3) mobilising, (4) spiritual, (5) dialogical, (6) and practical

connotations, to Habermas's understanding of the concept of human dignity.

- First, Sen has described human rights as ethical pronouncements that must not to be locked up in the narrow box of legislation. In Habermas's thinking human dignity is 'pre-legal'. Human dignity is violated in day-to-day situations and precedes legal implications.
- Second, human dignity violations happen in specific local contexts, such as in Eastleigh. The human dignity of the less fortunate connects the concept of legal rights with struggles against human rights violations on the ground. In order to become relevant, human rights have to be localised and to start 'from below'.
- Third, according to Sen, human rights are the 'imperfect obligation' that any person has who is in the position to help. The violation of human dignity motivates agents to act courageously against deprivation. Human dignity explains the mobilising force of human rights in a praxis that transcends regional, national and religious boundaries.
- Fourth, human dignity as an ultimate value is a part of 'comprehensive systems' or world religions. Spiritual interpretations of human dignity can also be part of the struggle for action-oriented political and moral grammar of human rights.
- Fifth, Sen talks about the dialogical merit of human rights. Habermas views modernised religion as a 'contemporary intellectual formation' that constitutes an equal partner in the intercultural dialogue on human dignity. The concept of human dignity in Habermas's discourse theory calls for a public discourse on what human dignity might entail from different cultural and religious perspectives. In Habermas's theory, religions can thus offer 'untapped moral institutions' such as, I have suggested, the action-oriented *imago Dei* and *wilayah* concepts that can offer substance to the dialogue on the concept of human rights and dignity.
- And sixth, in his theorising about human rights Sen has afforded an important place to human rights activism. According to Habermas, human dignity has to be action-focused. In line with the Frankfurt School, critical theory gives pride of place to the perspective of those fighting for the human dignity of the oppressed, the excluded and the marginalised.

The concept of a human dignity-based human rights culture with the six features identified can thus help to understand how local communities of believers in Eastleigh bear witness to their respective faiths in an interreligious framework. By doing so, a human rights culture that finds its moral source in resistance to actual violations of human dignity can play a modest but constructive, bottom-up role in interreligious relations at a local level. Human rights at the local intercultural level of Eastleigh not only exist as international law; they rather ‘happen’ contextually and ‘diapractically’. As values, human rights are not written in stone, but they have a dialogical merit in an ongoing universalising process of impartial, non-parochial voices from far and near. In Eastleigh, respect for human rights culture can offer a methodological structure for difficult but necessary interreligious and cross-cultural interaction in the public space, for instance, on the occasion of *mihadhara*. Religious connotations that underlie the concept of human dignity – such as *imago Dei* and *wilayah* – can provide a normative, mobilising force for this kind of joint practice of ‘connective justice’ (Van der Ven), ‘liberative praxis’ (Esack), respectively, or for ‘a tested training ground for broader dialogues involving religious and nonreligious conceptions of human dignity’ (Santos 2015: 74).

Looking at the context of the local civil society in Eastleigh, my conclusion is that it is possible indeed to reframe Christian–Muslim relations in terms of a human dignity-based human rights culture, in order to renew its relevance for interreligious dialogue in practice. The joint struggle for a dignity-based human rights culture, with distinct shades and features as discussed, can offer a way to end the fatigue that currently bedevils interreligious discursive dialogue. Human rights culture can indeed turn interreligious discursive dialogue into a human dignity-based diapraxis. But this requires a paradigm shift in Christian–Muslim relations, away from formal discursive dialogue. As the Eastleigh example shows, human rights activism can indeed set the agenda for a diapraxis of that kind, through its resilient civil society, that includes local NGOs, CBOs and FBOs. Constructing a localised human dignity-based human rights culture by establishing diapractical joint ventures is one of the ‘monumental tasks’ (cf. Appleby 2003: 223) of religious agents in Eastleigh. In ‘Little Mogadishu’ a localised human rights culture *happens* through diapraxis.

NOTE

¹ Cf . McCrudden quoted by Habermas (2010: 467) ‘everyone could agree that human dignity was central, but not why or how’.



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Appendix



UN 70th Anniversary Commemorative Edition

UNIVERSAL DECLARATION OF HUMAN RIGHTS

FOREWORD

On 10 December 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights, the full text of which appears in the following pages.

After this historic act, the General Assembly called on all Member States to ensure that the Declaration is 'disseminated, displayed, read and expounded principally in schools and other education institutions, without distinction based on the political status of countries or territories'.

The pursuit of human rights lies at the heart of the mission of the United Nations. It underpins the hopes of millions of people for a life in freedom, security and prosperity. The Universal Declaration of Human Rights remains as relevant today as it was on the day it was adopted. I hope you will make it a part of your life.

UN Secretary-General Ban Ki-moon

All human beings are born with equal and inalienable rights and fundamental freedoms

The United Nations is committed to upholding, promoting and protecting the human rights of every individual. This commitment stems from the United Nations Charter, which reaffirms the faith of the people of the world in fundamental human rights and in the dignity and worth of the human person.

In the *Universal Declaration of Human Rights*, the United Nations has stated in clear and simple terms the rights which belong equally to every person.

These rights belong to you.

They are your rights.

Familiarise yourself with them. Help to promote and defend them for yourself as well as for your fellow human beings.

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy

freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

THE 30 ARTICLES

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.



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